

NATIONAL MARINE
SANCTUARIES

National Marine Sanctuary Management Plan Review Handbook

Second Edition

July 2000



*"It is a bad plan
that admits of no
modification."
Publius Syrus
42 B. C.*

ABOUT THIS HANDBOOK

This handbook, first prepared in December 1998, is intended to provide participants (including the staffs and advisory councils of national marine sanctuaries), their partners, and other interested parties with an overview of how the National Marine Sanctuary Program (NMSP) will conduct management plan reviews.

This handbook incorporates the experience and knowledge gained by the NMSP since management plan reviews were started two years ago. Future editions will be prepared as necessary to reflect any additional lessons learned as reviews continue or to reflect major changes in the NMSP.

Comments or questions on the handbook or the management plan review process should be directed to:

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Table of Contents	
I. Introduction	
Overview of Management Plans	5
Scope of Management Plan Reviews	5
Principles for the Review and Revision of Management Plans	6
Level of Effort During a Review	6
Generalized Process for Review of a Management Plan	7
Proposed Schedule for Review of All Management Plans	7
II. Phases for Management Plan Review and Revision	
Initiation	12
Prescoping	18
Scoping	19
Evaluation and Prioritization	
1 Management Plan	30
Full Checklist for Review Process	32
III. Review Process for “Five-Year Clause” Sites	35
IV. Management Plan Elements and Format	36
Appendix 1: Description of Legal Requirements	
Administrative Procedures Act	40
Americans with Disabilities Act	40
Federal Advisory Committee Act	40
National Environmental Policy Act	40
National Marine Sanctuaries Act	41
Paperwork Reduction Act	41
Regulatory Flexibility Act	41
Executive Order 12866 Cost Benefit Analysis	42
Appendix 2: Rulemaking Requirements	44
Appendix 3: Models	
Federal Register Notices	
Notice of Intent	46
Adding Scoping Meetings	50
Advance Notice of Proposed Rulemaking	54
Proposed Rule	57
Final Rule	63
Notice of Effective Date	72
Clearance Memoranda	74
Consultation Memoranda and Letters	79
Transmittal Memoranda	88
General Onepager	91

List of Figures

Figure 1: Overview of Management Plan Review Process	8
Figure 2: Issue Flow Chart	10
Figure 3: Order of Management Plan Review for Sanctuaries	11
Figure 4: Mock up of EIS/MP Cover	38
Figure 5: Mock up of EIS/MP Interior Page	39

List of Tables

Table 1: Action Plan Coding	26
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Selected Sidebar Notes

Initiation Steps	12
Elements of a “State of the Sanctuary” Report	14
Initiation Checklist	17
Prescoping Steps	18
Prescoping Checklist	18
Scoping Steps	19
Scoping Meeting Logistics	20
Scoping Checklist	21
Evaluation and Prioritization Steps	22
Evaluation and Prioritization Checklist	23
DEIS/DMP Steps	24
Elements of an Action Plan	25
DEIS/DMP Checklist	28
FEIS/FMP Steps	30
FEIS/FMP Checklist	31
Federal Register Formats	46
Clearance Memoranda Formats	74
Consultation Letter Formats	79
Transmittal Memoranda Formats	88

I. Introduction



Overview of Management Plan Reviews

Management plans are site-specific documents that the NMSP uses to manage individual sanctuaries. This handbook has been prepared to provide guidance to participants in the management plan revision process for the National Marine Sanctuary Program (NMSP). The handbook may also be used for informational purposes for other parties, including Sanctuary Advisory Council members, jurisdictional partners in other government agencies, managers of marine protected areas outside the NMSP, and interested members of the public.

In 1998, the NMSP undertook a comprehensive process that will lead to the review and possible revision of management plans at all twelve sanctuaries. Reviews of management plans have been undertaken because:

- most existing management plans are 10 to 17 years old, meaning they probably do not address evolving issues;
- most existing management plans do not incorporate state-of-the-art concepts and practices associated with management of marine protected areas; and
- the National Marine Sanctuaries Act (NMSA) has a statutory requirement that management plans should be reviewed on a periodic basis.

Scope of Management Plan Reviews

The scope of a management plan review will differ from site to site, and should be determined by a discussion among the site and national office staff, in consultation with legal advisors. The review of the management plan will probably fall into one of three main categories:

1. “tweaking:” the management plan is generally sound but the site might wish to prepare supplements, such as education or research plans.
2. “modifying:” sections of the management plan are generally sound but regulations or other parts may be dated or inadequate, and the site decides to rewrite the management plan.
3. “overhauling:” the management plan, including the regulations are dated or inadequate, and need to be redone.

The process discussed in the remainder of this handbook is adaptable to any of these levels of review, and may be somewhat shorter for those sites in the “tweaking” category.

Management Plans:

- *summarize existing programs and regulations;*
- *articulate visions, goals, objectives, and priorities;*
- *guide management decision-making;*
- *guide future project planning;*
- *ensure public involvement in management processes; and*
- *contribute to the attainment of system goals and objectives.*



NATIONAL MARINE
SANCTUARIES

not necessarily be saved for the management plan review. If an issue is threatening a sanctuary resource or management plan review is more than a year away, the site should take whatever steps are necessary to resolve that issue. This will help reduce the number of problems to be dealt with at one time. Additionally, not everything has to be finished during a management plan review. If a problem or project is so complex or large-scale that it could or will delay the management plan review process, it should be planned during the review process and implemented at a later date (e.g., Tortugas 2000).

Principles for the Review and Revision of Management Plans

The following principles will underlie the review process:

- Revised management plans will be consistent with principles of sound marine resource management, available scientific information, legal mandates, and system policies.
- The management plan revision process will be driven by site-specific issues and needs, with a national issue and strategic plan overlay.
- The management plan revision process will be adapted to the needs and resources of the site.
- Staff resources, as necessary to complete the management plan review process, will be locally hired, where feasible.
- The revised management plan will be written in plain language to allow a broad understanding by the general public.
- The management plan revision process will be kept as simple as possible, consistent with legal and policy requirements.
- The revision process will include extensive public participation.
- Care will be taken to keep the public informed on a periodic basis so that public awareness remains high and efforts don't "disappear."

Level of Effort During a Review

Management plan reviews require a investment of labor and resources. While significant additional funding will be provided to the site to help support the review and any subsequent revision, the site should also expect that many staff members will need to re-prioritize their work to allow their participation in this process, either as direct members of the team or at key points through collaboration and review. It is important that as many staff mem-

bers of possible be involved in this process: they are after all building *their* management plan.

The review team itself should consist, at a minimum, of the Sanctuary manager; a local project manager; personnel from the national office, who will provide a national context for the review and serve as technical advisors; and the attorney assigned to the site in the National Ocean Service's General Counsel (GCOS).

The site's Sanctuary Advisory Council should also be prepared to be involved in this effort. A Council provides a link to the community, serves as a forum for discussion at various stages in the review process, and functions as a valuable partner for implementation of the management plan.

If the site already has a Council, efforts should be made early in the process to determine the appropriate role of the Council in the process and to prepare Council members to fulfill that role. If the site does not have a Council, one should be established early in the process.

Process for Review of a Sanctuary Management Plan

The process presented in the rest of this handbook (and graphically in Figure 1) is intended to provide a general overview of how management plans should be reviewed and revised. This overview is to help sites begin their planning efforts and to inform colleagues and interested members of the public about how the NMSP intends to conduct these reviews. It should be understood that the review / revision process will differ for each site, given the complex array of factors that are involved.

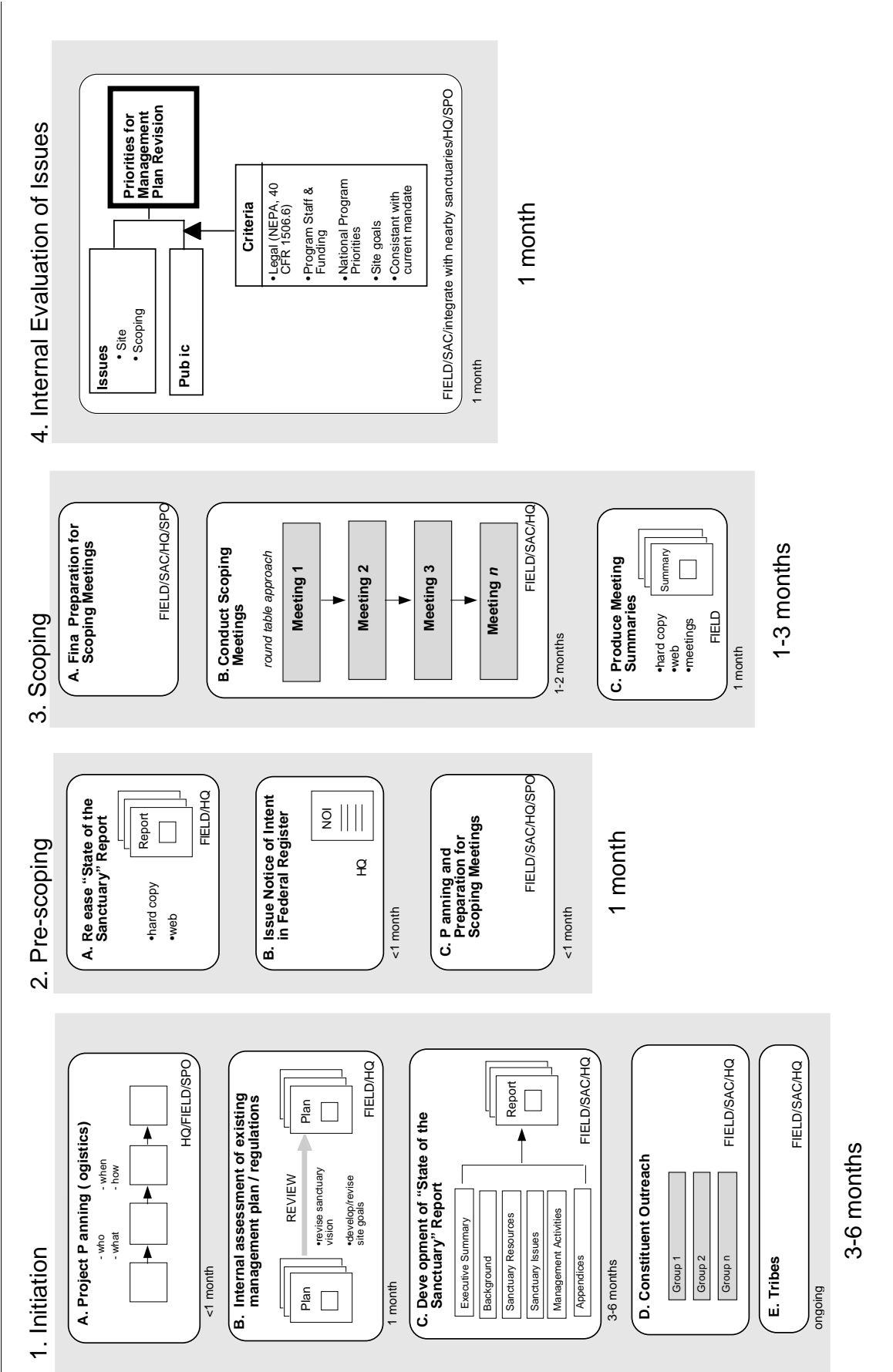
Figure 2 also shows the entire process but from the perspective of what may occur for a specific issue or functional area.

Proposed Schedule For Review of all Management Plans in the NMSP

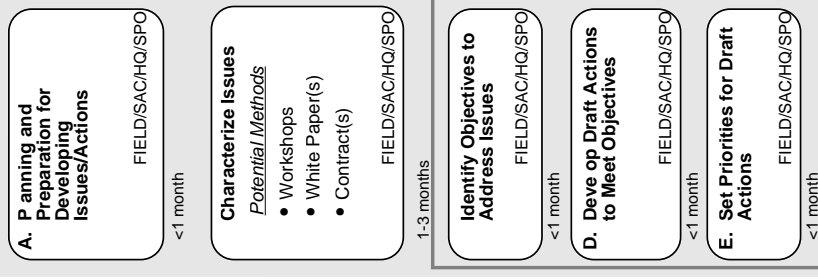
The NMSP expects that it will take seven to ten years to complete a review of the management plans of all twelve sanctuaries. Figure 3 illustrates the proposed order of review, but this order may be expected to change as the needs of the NMSP and individual sites do.



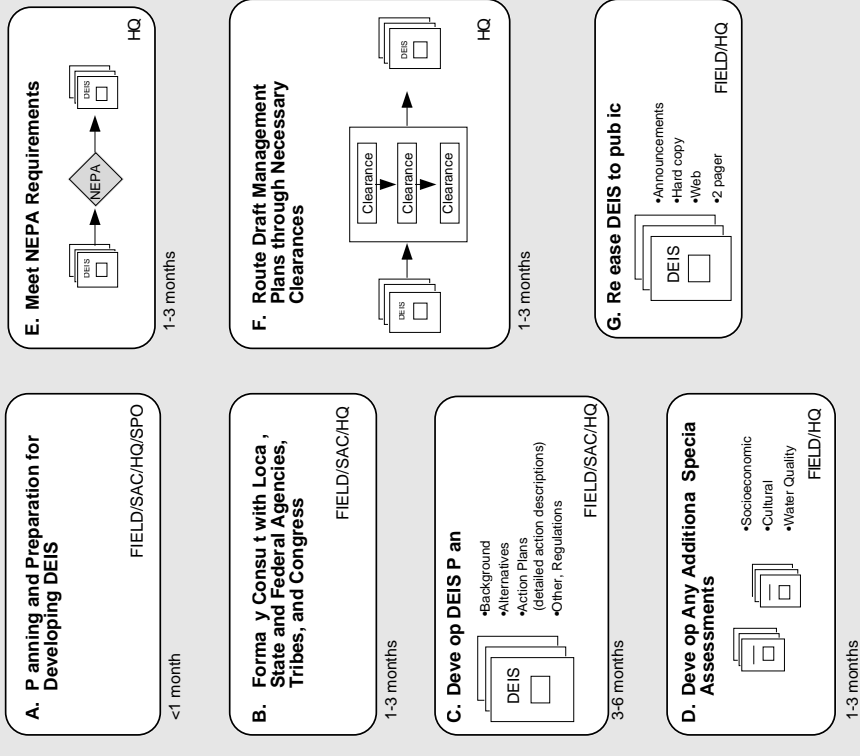
Figure 1: Process Overview



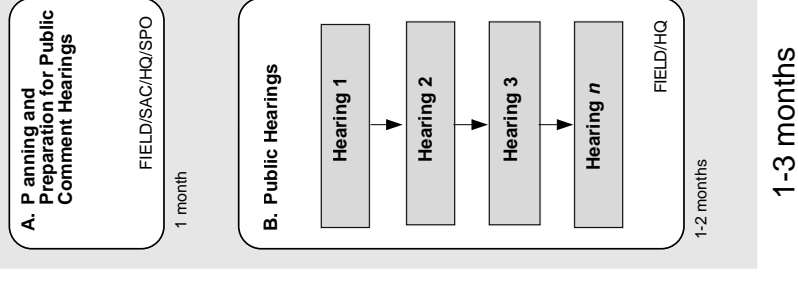
5. Characterize and Prioritize Issues and Develop Recommendations



6. Develop the Draft Environmental Impact Statement



7. Public Comment on DEIS



8. Produce Final Management Plan

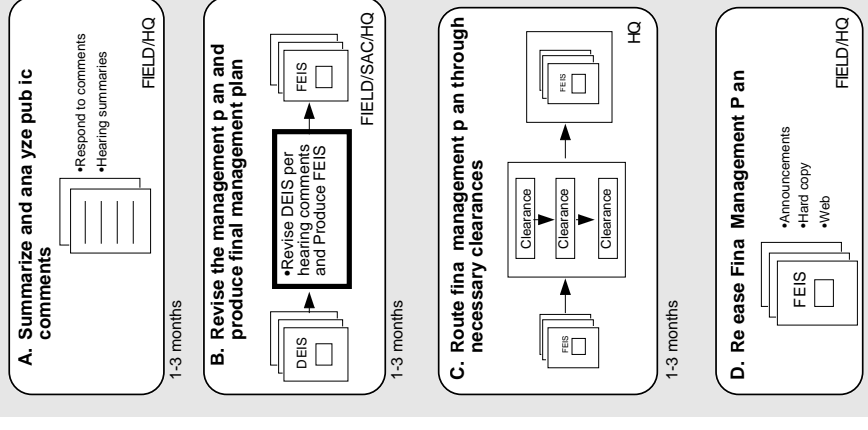


Figure 2: Issue Flow Chart

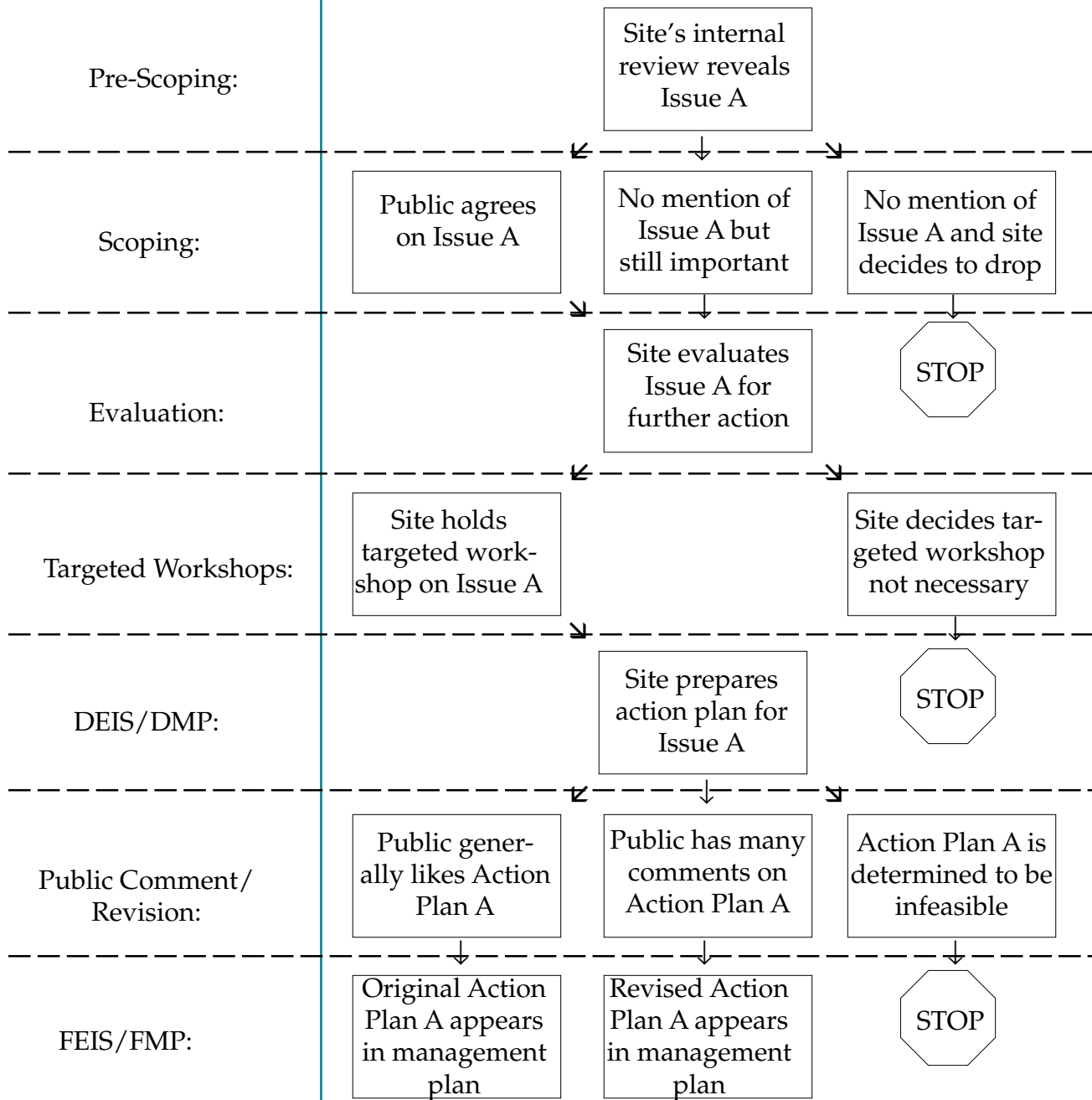
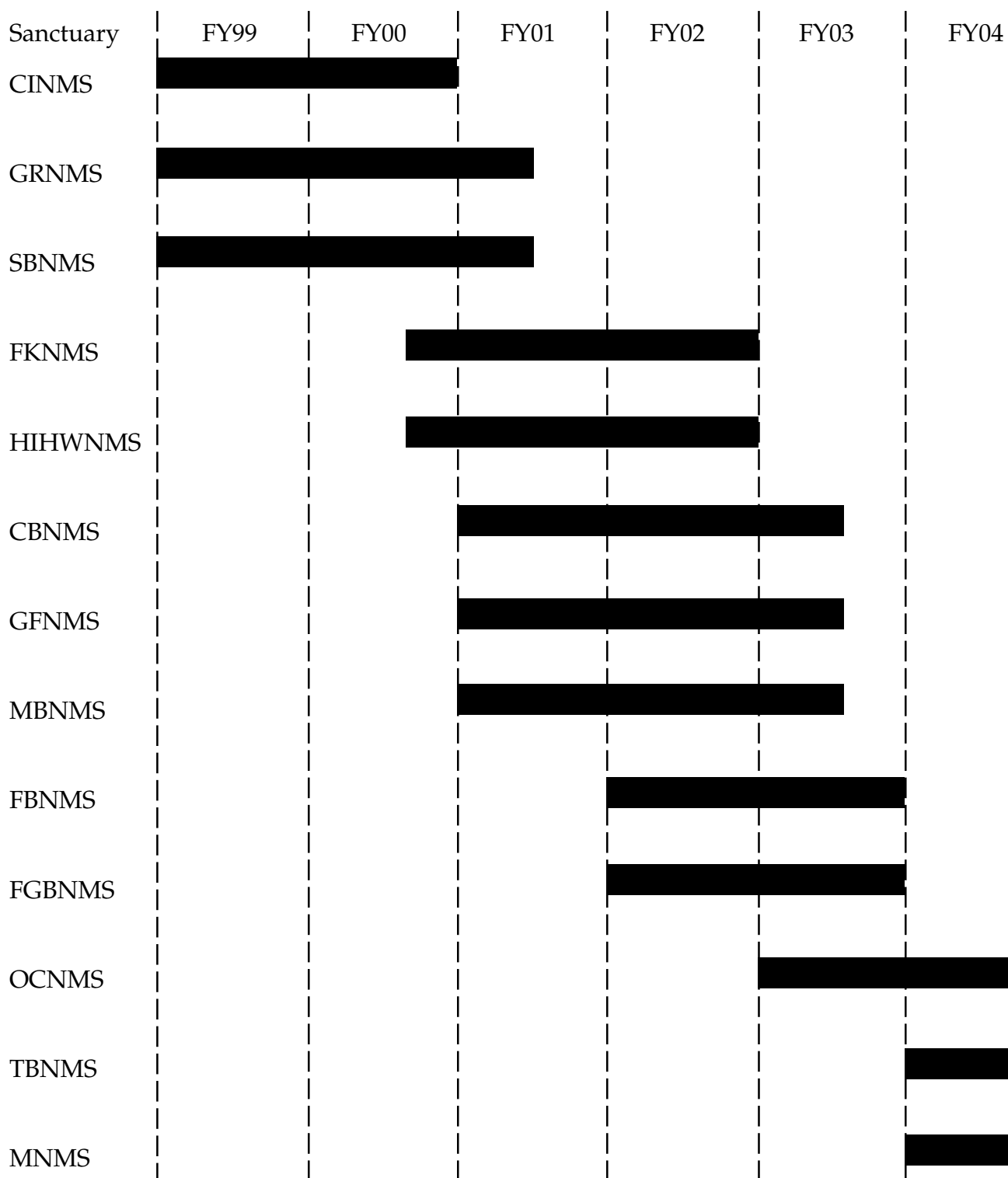


Figure 3: Order of Management Plan Reviews for Sanctuaries



*Phases of
Management Plan
Review and Revision:*

- *Initiation*
- *Prescoping*
- *Scoping*
- *Evaluation and Prioritization*
- *DEIS/DMP*
- *FEIS/FMP*

Initiation Steps:

1. *Conduct site visit*
2. *Reexamine existing management plan*
3. *Determine a statement of the desired future*
4. *Develop scoping document*
5. *Assess constituent development*
6. *Develop outreach plan*
7. *Develop project plan*

*Prescoping Total
Time:
6-12 months*



Initiation

Overview

This first phase of the review process helps the sanctuary begin preparing for its management plan review through a series of preliminary projects and activities.

Steps

1. *Conduct site visit.* In advance of the scoping meetings of the management plan review at a site (about 6-12 months in advance), members of the national office's management plan review team will visit a site. Efforts at this meeting will focus on laying the groundwork over the following months for five main project areas:

- reexamination of the existing management plan and associated projects and structures;
- development of a "State of the Sanctuary" report;
- constituent development;
- outreach planning; and
- overall project planning.

These five project areas will likely run concurrently, depending upon staff size and backgrounds. Some will take longer than others. Each project area is discussed in more detail below.

2. *Reexamine existing management plan and associated projects and structures.* This project will help the site prepare for its management plan review by looking at where it has come from and where it is at that time. The review should be conducted by internal staff, at least at first, and may be accomplished by a variety of ways, including:

- Reading the existing management plan. Did the management plan define a vision or desired future for the Sanctuary? What were the management plan objectives and were they implemented and achieved? If not, why? If so, do the objectives need to be modified, deleted, or updated? Are there parts the site particularly feels are relevant, or that have become obsolete or need improvement?
- Determining what has changed over time. What is the state of the resources? What are the management tools that the site uses most now?
- Examining major management decisions made since the management plan was completed. Were those sound deci-

sions? Have they stood the test of time? Are they supported by the community?

- Inventorying and reviewing existing partnerships. With whom is the site working? Do those partnerships/projects still make sense? Is there someone with whom the site should be working and is not?
- Reviewing existing projects and commitments of the site's staff. Does everything still make sense? Is staff time spent on projects and products that are meeting the site's priorities, or are they bogged down with meeting commitments that no longer make sense?
- Talk informally to the jurisdictional partners of the site's resources (other Federal, State, and local agencies). What are their thoughts and concerns? How should they participate in the revision effort?
- Talk informally to the site's stakeholders (the Sanctuary Advisory Council if there is one; otherwise, through informal individual conversations). What are their thoughts and concerns? How should they participate in the revision effort?

Costs at this time will be mainly staff time, since this effort should be conducted by staff members.

Legal requirements to keep in mind during the review are those associated with the National Environmental Policy Act (NEPA; see Appendix 1 for a discussion of individual acts and executive orders). During this pre-scoping phase, the site is taking stock of its present situation and this must include an assessment of the challenges facing the site and consideration of possible responses to those challenges. The site must be cautious, however, and should not make any decisions or proposals at this early stage.

3. Determine a statement of the desired future for the sanctuary. This statement provides the framework for the overall development of the management plan, helps in later steps to evaluate and prioritize issues and functional areas, and serves as the foundation for future efforts in evaluating how much progress the sanctuary has made toward the objectives it develops for itself in its management plan. For a detailed overview of this process, see the manual on effectiveness evaluation (under development).

Costs should be minimal if this step is conducted internally. If the site wishes to conduct a workshop, costs will increase to possibly include travel, meeting space, and facilitation.



Elements of a “State of the Sanctuary” Report:

- *Introduction*
- *Brief history of the sanctuary*
- *Regional context, with map*
- *Status of natural resources*
- *Status of cultural resources*
- *Status of human uses*
- *Summary of sanctuary programs, including education, outreach, research, monitoring, volunteer programs, advisory council, enforcement programs, and revenue enhancement projects*
- *Considerations for the upcoming management plan review, including emerging issues or unique circumstances*



There are no specific legal requirements.

4. *Develop a “State of the Sanctuary” report.* There is no requirement for a site to prepare a special document for the scoping process. However, some sites have been criticized during the scoping process for not providing enough information to which the public can respond. While the site may want to be careful about not appearing to bias the public, some information (the current status of the resources and the site’s accomplishments) could be provided to the public in order to help them prepare for the scoping meetings. One way of doing so would be to prepare a “State of the Sanctuary” report, as a very concise (25-30 pages) document that summarizes the current condition of the Sanctuary (see sidebar for a list of elements that should be included). The layout should be similar to that shown in Section IV for a management plan. This report will help prepare the public for the scoping process by giving them a basis for their recommendations and thoughts. The report will also help the site organize itself for the review process to come.

The “State of the Sanctuary” report should be based on existing information. The science team of the National Programs Branch and the Communication Branch of the national office can provide assistance with this effort.

Costs of producing the “State of the Sanctuary” report will vary, depending upon if it is produced internally or by a consultant.

Legal concerns relate to how information is presented in the report; since this is a pre-scoping document, the site should present factual information about the status of the resources and existing programs. Options to address issues may be presented but specific language should also be included that such options are only some of those under consideration and that the formal NEPA process will be completed before any decisions are made.

5. *Assess the state of constituent development at the site and determine if enhancements are necessary.* Management plan reviews will raise the profile of a site and bring added or new attention. These reviews also involve intensive public involvement. Given these factors, it is essential that a site have clear and strong lines of communication with its constituents, including user groups, non-governmental organizations, academia, jurisdictional partners, contacts in congressional and gubernatorial offices, and the media.

The site should decide whether existing mechanisms (e.g., Sanctuary Advisory Council) are sufficient for the management

plan review. If so, efforts should focus on how to target those mechanisms during the review. If not, the site should dedicate its efforts toward the development of stronger constituent relations through such mechanisms as:

- establishment or reformatting of a Sanctuary Advisory Council;
- targeted individual or small group meetings;
- meetings with elected officials or their staffs;
- establishment of a listserv or electronic mailings;
- development of a mailing list; and/or
- development of a media contact list and regular issuance of press releases.

The Communications Branch of the national office can provide assistance with these efforts.

Costs associated with this project area will be mainly be staff time and possible expenses related to equipment and printing as necessary. Consultant services, if needed, will add substantially to costs.

Legal requirements to keep in mind during this project are associated with the Federal Advisory Committee Act (FACA). Any meetings with groups of people (except meetings with other Federal and/or State government employees) should not attempt to reach any kind of consensus; doing so implicates FACA and its host of requirements. Meetings with Sanctuary Advisory Councils are exempt from FACA but are subject to limitations contained in the National Marine Sanctuaries Act and individual Council charters.

6. Develop an outreach plan to support the management plan review. Though a site will have numerous outreach projects in place, a specific plan for outreach to support constituent development efforts and better involve the public should be developed for the management plan review process. This process should begin by conducting a brief “needs assessment” to determine who the target audiences are, what they already know, what the Sanctuary would like them to know, and the best ways to deliver that message. The outreach plan should include a media component and a plan to deal with controversies as they arise.

The Communications Branch of the national office will provide assistance with these efforts.

Costs associated with this project area will involve staff time and/or consultant services related to developing new outreach



products (drafting, editing, graphic layout, and printing) or revamping or reprinting existing products.

Legal requirements affecting this project area are related to NEPA and are the same as those discussed under step #2.

7. Develop an overall project plan for the management plan review. Though this handbook outlines a generalized process for conducting a management plan review, the actual process at each site will be dependent on a number of factors, including:

- the nature and scope of changes the site staff would like to see;
- how old the current management plan is;
- the level and nature of controversial issues at the site; and
- the resources available to conduct the management plan review.

This project area focuses on developing a detailed implementation of the review adapted to these factors. Starting with the generalized process (see Figure 1), the site should adapt this process to the site, with particular attention to filling in details related to schedule, budget, and personnel.

The schedule should complete the review within a reasonable time frame (24 to 36 months) and set due dates for major milestones (e.g., product deadlines, scoping meetings, release of documents). The schedule should make allowances for ongoing major projects at the site (e.g., normal research seasons, annual public events such as Coastweeks, etc.) that may impact progress on the management plan review.

A detailed, realistic budget should also be worked up for the review. This budget should detail what costs will be absorbed within the site's existing (base) budget and which costs will require additional resources or funding. The budget should reflect all the costs associated with the review, including:

- personnel costs, including present staff and new hires;
- consultant services as needed, including facilitators, writers, editors, graphic artists, researchers, economists, and technical experts;
- travel, including local and to other sites;
- meeting facilities;
- advertisements/notices;
- equipment;
- printing;

- mailing; and
- miscellaneous supplies.

The project planning should also involve an assignment of personnel to various aspects of the management plan review. The site must have one person who is the designated local coordinator for all the activities related to the management plan review. This may be an existing staff person, a temporary federal employee, or a contractor, though a contractor may be limited in his or her abilities to represent the federal government at meetings. The role of the Sanctuary Manager should be spelled out, as well as the roles of existing staff members for specialized tasks during the review process (e.g., press releases may be prepared by the site's outreach or media person). Though the focus of the review and most of the effort associated with it will remain at the local level, how the local effort and team will be integrated with the national team also needs to be discussed.

The costs of this effort are minimal, since all planning can be done "in-house" by existing personnel.

Legal requirements associated with this project area are also minimal and focus mainly on preparing to meet the legal requirements that will be have to met later in the process, including NEPA, NMSA, and the Administrative Procedures Act (APA). Specifically, project planning should include plans for building an administrative record for all actions associated with the review effort (e.g., memorandums to the file to summarize meetings, syntheses of scoping comments, submitted public comments).

Prescoping

Initiation Checklist

Milestones Reached

- ☐ Initial site visit conducted?
- ☐ Management plan reexamination completed?
- ☐ Statement of desired future completed?
- ☐ Outreach plan completed?
- ☐ Project plan completed?
- ☐ Constituent development underway, including Advisory Council establishment or revamping as necessary?

Products Developed

- ☐ SAC Charter (as necessary, new or revised)
- ☐ State of the Sanctuary Report



NATIONAL MARINE
SANCTUARIES

Overview

Prescoping Steps:

1. Conduct second site visit
2. Issue Notice of Intent

Prescoping Total Time:
1 month

Prescoping Checklist

Milestones Reached

- ☐ Second site visit conducted?
- ☐ Notice of Intent cleared and signed?
- ☐ Notice of Intent published in Federal Register?

Products Developed

- ☐ Notice of Intent

This phase of the review process helps the sanctuary begin preparing for its scoping meetings.

Steps

1. *Conduct second site visit.* In preparation for the official initiation of the management plan review at a site, members of the national office's management plan review team will again visit the site. Efforts at this meeting will focus on reviewing the preparations of the last 6-12 months and ensuring that all necessary groundwork has been laid for the management plan review. Strategizing, brainstorming, and last minute tasking will probably also occur.

Costs for this step will include travel costs and staff time.

2. *Prepare and issue Notice of Intent in the Federal Register.* Using the model of a Notice of Intent (contained in Appendix 2), the site should prepare a notice that provides formal notification to the public that the NMSP is undertaking the review of that site's management plan. The notice can be a simple statement to that effect, or can become more elaborate and include such things as the dates and locations of scoping meetings and/or a request for preliminary comments. The draft notice will be routed through a clearance process at the national office (1-2 weeks) and then will be forwarded to the *Federal Register*, which publishes the notice three working days after it has been received. If the notice also announces scoping meetings, the notice must appear at least fifteen days before the first scoping meeting.

Costs for this step are minimal and only involve staff time.

NEPA requires that the Notice of Intent be published in the *Federal Register* before scoping begins.

Scoping

Overview



The next step is to start formally working with others outside NOAA to augment the preliminary issues and problems identified by the internal review. There are a number of ways to work with external parties:

- scoping meeting(s) allowing members of the public to bring their thoughts and concerns to NOAA. A general scoping meeting often provides the first formal opportunity for the public to be involved in the process; Appendix 3 contains a one-pager that can be adapted to the site and handed out to the public prior to scoping meetings;
- other means for the public to provide comments, including in writing, faxing, and emailing;
- individual meetings with governmental partners providing an opportunity for a site's co-jurisdictional agencies to present their thoughts and concerns. Individual meetings will lay the groundwork for future cooperation during the revision process and highlight potential problems, and may encourage suggestions that the agency would not bring up in a public forum;
- targeted workshops bringing together a select group of people to review a specific topic or issue area. These workshops may evolve from issues or needs identified at the scoping meeting(s) or through other venues, and will allow focused discussion that will be beneficial for the management plan revision process (NOTE: Consensus advice or recommendations should not be sought); and
- Sanctuary Advisory Council meetings focusing on the management plan to provide a good community-based overview of the Sanctuary.

The results of these meetings should be summarized in reports, notes, and/or minutes that can be used for internal discussion to clarify problems and develop guidance for the remainder of the revision process.

Steps

1. *Release "State of the Sanctuary" report or other scoping document.* Any document intended to help the public prepare for scoping needs to be released to allow sufficient time for the public to review. The document should be available in a number of ways, including hard copies and posted to the web.

Printing and distribution costs would be involved.

There are no legal requirements for a scoping document.

2. *Conduct scoping meetings.* One of the primary means of obtaining public input during the scoping process is by conduct-

Scoping Steps:

1. *Release scoping document*
2. *Conduct scoping meetings*
3. *Accept public comments*
4. *Synthesize scoping comments*
5. *Re-evaluate the statement of desired future and develop general goals*

*Scoping Total Time:
1-3 months*



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*Scoping Meeting
Logistics:*

- *local notice provided*
- *meeting facility procured (check access, location, acoustics)*
- *meeting recording method determined (notes, tape recorder, formal recorder)*
- *supplies centralized (flip charts, markers, info documents, etc)*
- *presentation prepared*
- *sign-in sheet prepared*

ing scoping meetings in the communities adjacent to the sanctuary. These meetings should be held at times (usually evenings) and in locations that will facilitate attendance by most interested parties. There is no standard format for scoping meetings. However, a roundtable format, consisting of breaking attendees into individual tables of eight to ten with their own facilitators, has proven very useful. This format allows participation at the individual level that is often not possible in a “traditional” meeting format of individuals speaking before an audience. The facilitator at each table should take notes, but must be careful to document individual comments and not seek a consensus view at the table.

Scoping meetings are primarily for the general public. The site should also consider meetings with targeted individuals or groups (e.g., associations representing user groups) to ensure their thoughts are incorporated into the scoping process. Meetings of Sanctuary Advisory Councils may also be geared toward obtaining public input during the scoping process, but should not replace general scoping meetings.

Costs for this step will include travel, staff time, meeting facility fees, and charges for meeting notices in local media outlets.

Any meeting facilities chosen for scoping meetings must be in compliance with the Americans With Disabilities Act (ADA; see discussion in Appendix 1). Site staff should continue to be aware of concerns about FACA as discussed earlier.

3. Accept public comments by other means. Another method to obtain public input for scoping is to provide a public comment period during which members of the public can provide written comments by regular mail or e-mail. This comment period may be announced in the Notice of Intent, and ideally should both overlap and extend beyond the time during which scoping meetings are being held.

No additional costs are expected for this step.

NEPA requires opportunities for public comment during a scoping process.

4. Synthesize scoping comments. After all scoping meetings have been held and the deadline for written comments has passed, the site should compile, analyze, and synthesize all of the information that has been received into a concise summary of major findings. This summary can be provided back to the public for their information.



Costs for this step are minimal and involve staff time.

There are no specific legal requirements for how to synthesize scoping comments; however, prior sites have found it useful to organize around general subject areas and/or geographic locations.

5. Re-evaluate the statement of the desired future and develop general goals that are necessary to achieve that vision. After the site has completed its own internal review and has heard from stakeholders and the public, it should revisit the desired future statement and ensure that it still reflects the direction toward which the sanctuary wants to work. The site should then develop general goals that will help reach the desired future. The effectiveness evaluation manual under development contains a process to help the site do this.

Costs for this step are minimal, involving staff and perhaps Sanctuary Advisory Council time.

There are no specific legal requirements.

Evaluation and Prioritization

Overview

Once the site is certain of the issues and problems that it potentially faces, the next step is to evaluate those issues and priori-

Scoping Checklist

Milestones Reached

- ☐ Scoping document released?
- ☐ Scoping meetings held?
- ☐ Deadline for written comments passed?
- ☐ Scoping synthesis completed?

Products Developed

- ☐ Scoping Document
- ☐ Notice of Intent
- ☐ Scoping Comment Synthesis
- ☐ White Paper(s)



NATIONAL MARINE
SANCTUARIES

*Evaluation and
Prioritization Steps:*

1. *Evaluate and prioritize issues and functions*
2. *Focus on priority issues and functions*

*Evaluation and
Prioritization Total
Time: 1-4 months*

*Considerations to help
evaluate and prioritize
issues and program
areas:*

- *community attitudes*
- *areal extent of threat*
- *intensity of threat*
- *urgency*
- *political feasibility*
- *social practicality*
- *site's ability to address threat*

tize the ones that the site will be able to address. Once those priority issues have been determined, the site will provide them with more in-depth attention to determine the best way to resolve them.

1. *Evaluate and prioritize issues and program areas.* In light of the goals developed in the prior phase, the site should determine what issues and program areas (e.g., research, education) on which the site wishes to focus further attention. Other factors may include priorities laid out in other documents such as strategic plans; national policies and projects; the resources (both staff and budget) available to implement the management plan; and determinations on what issues the site can and should address, and what issues are better addressed by other authorities.

Costs for this step are minimal and only involve staff time.

There are no specific legal requirements for how to synthesize scoping comments.

2. *Focus on priority issues and program areas.* The purpose of focusing on specific issues and functions is to help the site fully understand the issue/function, ensure that no options for addressing that issue/function are left out, and help increase the credibility of any future actions to address that issue/function. Once the site has determined the issues and functional areas on which to concentrate further attention, it should then decide which of several methods to employ. These may include developing a white paper, hosting a workshop, or creating a working group of a Sanctuary Advisory Council.

Developing a white paper will help the site explore all facets of an issue/function and identify the solutions or activities that a site might wish to consider. External review of the white paper will help fill in any gaps.

Targeted workshops can also be used to analyze the issue/function in detail and help determine the steps that the site should take to address it. Ideally, each workshop could form the basis for an action plan in the DEIS/DMP.

Council working groups meeting numerous times is another mechanism that could be used for complex, longer-term issues. Working groups are conducted under the aegis of the NMSP's Sanctuary Advisory Council authority, so that meetings can be conducted without worrying about FACA concerns. This

mechanism will also automatically allow the results of the workshops to be vetted through the full Council itself. As with normal Council meetings, workshops/work group meetings should be open to the public. Local notification should be provided and meeting facilities should be large enough to hold the anticipated audience.

Costs for these types of activities will vary considerably and may include local meeting notification, meeting facilities, facilitation services, travel, printing, distribution, and consultant services.

Legal requirements will also vary. Workshops and working groups in particular should make sure that legal requirements associated with NMSA, NEPA, and FACA are addressed.

Draft Environmental Impact Statement/Draft Management Plan

Overview

After the scoping process is completed, the site must then decide the extent of changes that are necessary to the management plan. If the proposed revisions do not involve any new or

Evaluation and Prioritization Checklist

Milestones Reached

- ☐ *Scoping synthesis completed?*

Products Developed

- ☐ *White Paper(s)*



NATIONAL MARINE
SANCTUARIES

changes to existing regulations, or any other changes to the original terms of designation of a site (such as a change to the boundary or to the scope of regulations), then the site will probably not have to prepare an environmental impact statement. If new regulations or any change to an original term of designation is proposed, an environmental impact statement will probably need to be prepared.

DEIS/DMP Steps:

- 1. Determine study area*
- 2. Send consultation letters*
- 3. Prepare action plans*
- 4. Begin writing management plan*
- 5. Begin special assessments*
- 6. Assemble draft management plan*
- 7. Complete special assessments*
- 8. Clear draft management plan*
- 9. Release draft management plan*
- 10. Accept public comments*

*DEIS/DMP Total Time:
6-12 months*

Steps

1. Determine study area. If the site has not already done so, it must now determine the study area to be considered for the preparation of the Draft Environmental Impact Statement/Draft Management Plan (DEIS/DMP). The study area should be large enough to adequately address the issues the site has determined are important in the review process. The extent of the study area may add issues that have not been considered and will influence the preparation of impacts of alternatives in the DEIS/DMP.

Costs are determined by how the site wants to decide on a study area. If the boundaries are determined in-house, only staff time will be expended. If the services of a consultant are required, the cost will increase accordingly.

There are no specific legal requirements.

2 Prepare and send out consultation letters. The site will need to consult with a number of parties as it continues the management plan review process, including other federal agencies, state agencies, the governor of the involved State (particularly if State waters are involved), and Congressional members. Several of these consultations are specific:

- section 7 Endangered Species Act consultation with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service;
- resource assessment consultation with the Department of the Interior; and
- federal consistency consultation with the State's coastal zone management agency (again, if State waters are involved).

The site should also consult in general with the Department of Defense, Department of Energy, Department of Transportation, and the Environmental Protection Agency, as well as with any State agencies that might have jurisdiction or an interest in the management plan review. The governor and Congressional members (majority and minority leaders in both houses, and heads of both House and Senate committees) should also be



notified. Consultation letters should provide a brief background on the issue, ask for specific comments, and provide a deadline for those comments. Models for all types of consultation letters are provided in Appendix 2.

Costs are minimal, consisting of in-house labor.

Consultation is required by both NEPA and NMSA.

3. Prepare action plans. At the heart of the action plans are attainable, quantifiable objectives that serve as the foundation for determining the effectiveness of sanctuary efforts. These objectives should be determined using procedures outlined in the effectiveness evaluation manual under development. The backbone of this manual is a decision tree that guides the site through a detailed set of questions and decision points that lead to the attainable, quantifiable objectives. The action plan then becomes the steps necessary to reach the objective(s).

The action plans form the main part of the management plan. Each action plan should describe the specific actions that is necessary to reach the objectives. There is no standard format for action plans, though all should include the elements listed in the sidebar.

There are no standard action plans required within all management plans. However, in order to help create consistency across the system, a standardized coding/numbering system (Table 1) has been created that all sites will need to use.

Once it has been determined what action plans will be prepared, each one should be assigned to the person most suited to prepare that action plan, whether it is someone on staff or a contractor/consultant retained for that purpose. Sufficient time should be allowed to prepare and conduct internal review(s) of each action plan until the participants are comfortable with the “final” draft action plan.

Table 1: Action Plan Coding System

<u>Management Area</u>	<u>Code</u>	<u>Definition</u>
Operations and operations, including: facilities; vessels; staffing; budgets; strategic planning; and general training.	O/A.1 – O/A.n	Actions taken to further day-to-day Administration
Policy regime of the sanctuary including: policies; regulations; permits; NEPA; consultation; designation; marine zoning; management plan review;	POL.1 – POL.n	Actions taken to further the protective

Elements of Action Plans:

- *Why/Need for the Action Plan*
- *What/Goal and/or Objective(s) of the Action Plan*
- *How/Action Plan Steps*
- *Where/Location*
- *Who/Personnel*
- *When/Schedule*
- *How Much/Costs*
- *How Well It Worked/ Effectiveness Evaluation*
- *Relation to Other Action Plans*



Sanctuary Advisory Councils	SAC.1 – SAC. <i>n</i>	Actions taken to establish and enhance the use of community-based bodies created to provide advice to sanctuary managers, including: charter development; member recruitment; and Sanctuary Advisory Council strategic planning.
Education	ED.1 – ED. <i>n</i>	Proactive actions targeted to various audiences to teach them about sanctuary resources, including: teacher training; curricula development; display development; and education plans.
Outreach	OUT.1 – OUT. <i>n</i>	Actions taken, in a more reactive and general manner than education, to increase awareness of sanctuary resources and activities, including: media relations; constituency development; speakers bureau; webpage development and operation; and brochure development.
Research	RES.1 – RES. <i>n</i>	Actions taken to further scientific investigation of sanctuary resources/ processes/qualities including: research plans/priorities and research projects.
Monitoring	MON.1–MON. <i>n</i>	Actions taken to further routine observations of defined parameters designed to help gauge the quality of the sanctuary environment including: water quality monitoring; volunteer monitoring programs; and vessel traffic.
Cultural Resources	CR.1 – CR. <i>n</i>	Activities taken to further protection of cultural/historical/archaeological resources of a sanctuary, including: cultural resource inventories and maritime history activities.
Enforcement	ENF.1 – ENF. <i>n</i>	Actions taken to further compliance with laws and regulations of the NMSP, including: development of enforcement plans; partnerships for enforcement purposes; development of penalty schedules; and aerial/on-the-water patrol plans.
Contingency Planning	CP.1 – CP. <i>n</i>	Actions taken to further responding to natural disasters and human-induced events, and enhancing the recovery of the environment from damage due to human-induced events including: emergency response; damage assessment; restoration activities; planning for emergencies; and engineering and site design.
Volunteers	VOL.1 – VOL. <i>n</i>	Actions taken to further the use of members of the community serving in an unpaid capacity to help protect sanctuary resources through a variety of functions, including: volunteer appreciation programs; docent training; and volunteer documentation.
Revenue Enhancement	REV.1 – REV. <i>n</i>	Actions taken to further acceptance of in-kind and monetary donations, and soliciting sponsors of the logo, including: use of sanctuary and site logos; friends' groups; and appropriate partnerships designed to increase revenues.

Costs may include those for both internal and external drafting and formatting action plans.

The site should maintain a proactive stance with the General Counsel's office and discuss action plans with them as action plans are drafted.

4. *Begin writing the management plan.* The supporting (i.e., non-action plan) parts of the management plan should be started, including updating the resource assessment (which should be based in part on the consultation as discussed above), the site's history, and an overview of the revision process. See Section IV for a management plan outline.

At this point, the site should also begin planning for the layout of the entire management plan. To help achieve a consistent look across the system, Section IV contains a template for how a management plan should generally appear, including a cover design and interior page layout.

Costs may include those for both internal and external drafting and formatting of supporting sections of the management plan review.

The site should maintain a proactive stance with the General Counsel's office and provide sections of the management plan for review as they are drafted.

5. *Determine and begin any special assessments that are necessary.* At this point, any special assessments that are necessary should also be started. These are the reports and requirements that may be required under the acts and regulations discussed in Appendix 1, and may include such things as a socioeconomic analysis for any proposed rulemakings, regulatory flexibility analyses for small businesses, and approvals for any public data collection (e.g., surveys or permit applications) requirements.

Costs will include those for consultants and/or special research that may be necessary for special assessments.

Discuss requirements under NEPA, Regulatory Flexibility Act, Executive Order 12866 Cost-Benefit Analysis, and the Paperwork Reduction Act with the General Counsel's office to determine what assessments might be needed.

6. *Assemble action plans and other sections into a draft management plan.* All of the action plans and other drafted parts should be assembled into a cohesive whole to form the draft management plan. This will most likely involve a series of revising and editing (both for grammar and content) steps to produce a document that is uniform in format and style, and consistent in information. There will be some preliminary reviews being conducted as well, such as with the Office of the General Counsel and higher levels of NOAA (doing so will help facilitate the



DEIS/DMP
Checklist

Milestones Reached

- ☐ Study area determined?
- ☐ Issues and functional areas to be addressed determined?
- ☐ Consultation letters sent out?
- ☐ Action plans drafted?
- ☐ EIS/MP supporting material drafted?
- ☐ Special assessments completed?
- ☐ DEIS/DMP compiled?
- ☐ DEIS/DMP routed and cleared?
- ☐ Proposed Rule with notice of release of DEIS/DMP, comment period, and public hearing printed in Federal Register?
- ☐ Public hearing held?
- ☐ Comment period closed?

Products Developed

- ☐ DEIS/DMP
- ☐ Proposed Rule
- ☐ Consultation Letters
 - ☐ NMFS, ESA Section 7 Consultation
 - ☐ USFWS, ESA Section 7 Consultation
 - ☐ DOI, Resource Assessment Consultation

clearance process later).

Costs will include staff time and document duplication, and may include those for any special services that might need to be provided by external experts, including writing, editing, and document layout.

The site should continue to consult with legal advisors throughout this step.

7. *Complete any special assessments that were determined to be necessary.* Before the draft management plan can be routed for approval and released for public comment, any necessary special assessments must be completed and included with the draft management plan for review and approval.

Costs should be minimal, as contracts for these assessments should have been let at earlier stages.

The site should continue to consult with legal advisors throughout this step.

8. *Route draft management plan through necessary clearances.* Once the draft management plan is ready, all the necessary cover memoranda and other documentation is prepared and packaged. Briefings for key personnel might be necessary, depending upon the complexity and controversy of the draft management plan.

Costs will be minimal and involve mainly staff time.

The General Counsel will continue to review and provide advice on the draft document and its clearance memoranda.

9. *Release draft management plan to the public..* Depending upon the extent and nature of the revisions (e.g., whether a NEPA document and/or new or revised regulations are included), different clearance and approval requirements are triggered. These requirements will be determined on a case-by-case basis and will be unique for each site. After the draft management plan has met all of the necessary procedural requirements, it is released to the public for review and comment. The site should consider various means of making the DEIS/DMP available to the public, including hard copies and cd's by request, depositing hard copies in local libraries, posting to a web site, and having shortened, "newspaper" versions available.

Costs will include staff time, duplication of the document, and other costs related to providing the document to the public.

APA, NEPA, and NOAA guidance have specific requirements related to public review; consult with GCOS for specific guidance.

10. Accept and compile public comments. The public comment period should be sufficiently long to allow the public an adequate opportunity to comment. NOAA guidance recommends a minimum of thirty days, but longer periods should be considered. Different means of commenting should also be provided, which may include additional public hearings and provisions for mailing, faxing, phoning, and e-mailing comments. Comments should be date stamped upon receipt, as these are part of the official administrative record.

Costs will mainly involve staff time.

APA, NEPA, and NOAA guidance have specific requirements related to public comments; consult with the General Counsel for specific guidance.

Final Environmental Impact Statement/Final Management Plan

Overview

Once the public has had the opportunity to provide input on the draft, the site will need to begin efforts to finalize their management plan.

- ☐ EPA, General Consultation
- ☐ DOD, General Consultation
- ☐ DOE, General Consultation
- ☐ DOT, General Consultation
- ☐ Congressional Members (of affected area)
- ☐ State CZM Agency, Federal Consistency
- ☐ State Agencies, General Consultation
- ☐ Governor
- ☐ Clearance Memoranda for DEIS/DMP
- ☐ Office Director to Assistant Administrator (clearance and signature)
- ☐ Assistant Administrator to Assistant Secretary, NOAA (informational)
- ☐ Assistant Administrator to Assistant General Counsel for Legislation and Regulation, DOC (clearance and signature)
- ☐ Assistant General Counsel to Chief Counsel for Advocacy, Small Business Administration (reg flex certification)

FEIS/FMP Steps:

- 1. Analyze public comment*
- 2. Revise draft management plan into final management plan*
- 3. Clear final management plan*
- 4. Release final management plan*
- 5. Issue Notice of Effective Date*

*FEIS/FMP Total Time:
3-6 months*

Steps

1. Summarize and analyze public comment. At the close of the public comment period, there will be a number of individual comments and transcripts of any public hearings that were held. All of the comments will have to be analyzed and considered in the preparation of the final management plan, FEIS, and regulations, as appropriate. Significant/substantive comments must receive a response in the final document, either generically or individually. If there are many comment letters (i.e., over one hundred), a summary of comments and responses can be prepared. If there are not as many comments, each substantive/significant comment raised should have a response.

Costs will mainly involve staff time.

APA, NEPA, and NOAA guidance have specific requirements related to public comments; consult with GCOS for specific guidance.

2. Revise the draft management plan to produce final management plan. Once the comments have been summarized and considered, changes may need to be made to the draft document to produce the final management plan, FEIS, and regulations, as appropriate.

Costs will include staff time, and may include those for any special services that might need to be provided by external experts, including writing, editing, and document layout.

The site should continue to provide legal advisors with advance copies of documents for review as changes are made.

3. Route final management plan through necessary clearances. As with the draft management plan, all necessary cover memoranda and other documentation are prepared and packaged. The final management plan then begins the formal NOAA clearance process. Again, briefings for key personnel might be necessary, depending upon the complexity and controversy of the final management plan and how much it differs from the draft management plan.

Costs will mainly involve staff time.

The General Counsel will continue to review and provide advice on the draft document and its clearance memoranda.



4. *Release Final Management Plan.* The review and clearance requirements for the final management plan will mirror that for the draft. After the final management plan has met all of the necessary procedural requirements, it is copied and released to the public. At the same time, it is submitted to Congress (and to the Governor, if State waters are involved) for a review period of 45 days of continuous session of Congress (which in reality is usually several months). Congress has the opportunity to make changes to the management plan. The Governor has the right to veto any part of the management plan insofar as it effects State waters.

Costs will include staff time, duplication of the document, and other costs related to providing the document to the public.

NEPA and NMSA has specific requirements related to review of the FEIS/FMP; consult with the General Counsel's office for specific guidance.

5. *Issue Notice of Effective Date.* After the 45-day review period is over, and any changes that need to be made have been completed, the site issues a Notice of Effective Date in the *Federal Register* to inform the public as to when the management plan and any accompanying regulations come into force.

Costs will involve staff time.

NEPA and NMSA may have some requirements; consult with the General Counsel's office for specific guidance.

Complete Checklist for Review Process

Initiation Checklist

Milestones Reached

- ☐ Initial site visit conducted?
- ☐ Management plan reexamination completed?

FEIS/FMP Checklist

Milestones Reached

- ☐ Public comment analyzed?
- ☐ DEIS/DMP revised to FEIS/FMP?
- ☐ Final Rule printed in *Federal Register*?
- ☐ 45-day review period over?
- ☐ Notice of Effective Date issued in *Federal Register*?

Products Developed

- ☐ FEIS/FMP
- ☐ Final Rule
- ☐ Clearance Memoranda
 - ☐ Office Director to AA
 - ☐ AA to Assistant Secretary, NOAA
 - ☐ AA to Assistant General Counsel for Legislation and Regulation, DOC
 - ☐ Assistant General Counsel to Chief Counsel for Advocacy, Small Business Administration
- ☐ Transmittal Memoranda
 - ☐ Governor (45-day review)
 - ☐ Congressionals (45 day review)
 - ☐ GAO (review)

- ☐ Statement of desired future completed?
- ☐ Outreach plan completed?
- ☐ Project plan completed?
- ☐ Constituent development underway, including Advisory Council establishment or revamping as necessary?

Products Developed

- ☐ Sanctuary Advisory Council Charter (as necessary, new or revised)

Prescoping Checklist

Milestones Reached

- ☐ Second site visit conducted?
- ☐ Notice of Intent cleared and signed?
- ☐ Notice of Intent published in Federal Register?

Products Developed

- ☐ Notice of Intent

Scoping Checklist

Milestones Reached

- ☐ Scoping document released?
- ☐ Scoping meetings held?
- ☐ Deadline for written comments passed?
- ☐ Scoping synthesis completed?

Products Developed

- ☐ Scoping Document
- ☐ Notice of Intent
- ☐ Scoping Comment Synthesis

Evaluation and Prioritization Checklist

Milestones Reached

- ☐ Focused attention given to priority issues and functional areas?

Products Developed

- ☐ White Paper(s)

DEIS/DMP Checklist

Milestones Reached

- ☐ Study area determined?

- ☐ Issues and functional areas to be addressed determined?
- ☐ Consultation letters sent out?
- ☐ Action plans drafted?
- ☐ EIS/MP supporting material drafted?
- ☐ Special assessments completed?
- ☐ DEIS/DMP compiled?
- ☐ DEIS/DMP routed and cleared?
- ☐ Proposed Rule with notice of release of DEIS/DMP, comment period, and public hearing printed in Federal Register?
- ☐ Public hearing held?
- ☐ Comment period closed?

Products Developed

- ☐ DEIS/DMP
- ☐ Proposed Rule
- ☐ Consultation Letters
 - ☐ NMFS, ESA Section 7 Consultation
 - ☐ USFWS, ESA Section 7 Consultation
 - ☐ DOI, Resource Assessment Consultation
 - ☐ EPA, General Consultation
 - ☐ DOD, General Consultation
 - ☐ DOE, General Consultation
 - ☐ DOT, General Consultation
 - ☐ Congressional Members (of affected area)
 - ☐ State CZM Agency, Federal Consistency
 - ☐ State Agencies, General Consultation
 - ☐ Governor
- ☐ Clearance Memoranda for DEIS/DMP
 - ☐ Office Director to Assistant Administrator
 - ☐ Assistant Administrator to Assistant Secretary, NOAA
 - ☐ Assistant Administrator to Assistant General Counsel for Legislation and Regulation, DOC
 - ☐ Assistant General Counsel to Chief Counsel for Advocacy, Small Business Administration

FEIS/FMP Checklist

Milestones Reached

- ☐ Public comment analyzed?
- ☐ DEIS/DMP revised to FEIS/FMP?
- ☐ Final Rule printed in Federal Register?
- ☐ 45-day review period over?



NATIONAL MARINE
SANCTUARIES

-
- ☐ Notice of Effective Date issued in Federal Register?

Products Developed

- ☐ FEIS/FMP
- ☐ Final Rule
- ☐ Clearance Memoranda
 - ☐ Office Director to AA
 - ☐ AA to Assistant Secretary, NOAA
 - ☐ AA to Assistant General Counsel for Legislation and Regulation, DOC
 - ☐ Assistant General Counsel to Chief Counsel for Advocacy, Small Business Administration
- ☐ Transmittal Memoranda
 - ☐ Governor (45-day review)
 - ☐ Congressionals (45 day review)
 - ☐ GAO (review)

III. Review Process for Five-Year Evaluations

Overview

As part of the designation arrangements for the FKNMS and the HIHWNMS, the NMSP agreed to provide an update to their respective State partners five years after the designation became

final. These updates will indicate how well the site has performed to that time and provide an opportunity for the Governor of the appropriate State to change the terms of the sanctuary as far as it effects State waters.

Steps

1. Determine target date for submission to the Governor.
2. (12 Months prior to submittal date) Conduct assessment of Sanctuary's performance. Factors to consider:
 - commitments made and met
 - commitments not met and why
 - items from annual accomplishment reports
 - any performance indicators developed as part of the management plan, AOPs, or other projects
 - contributions made by the Sanctuary that would not have happened otherwise
 - success stories
 - areas for improvement and how it will be done
3. (6 months prior to submittal date) Develop draft report (based on State of the Sanctuary report elements in the sidebar on page 14 summarizing accomplishments and providing list of future actions:
4. (3 months prior to submittal date) Provide opportunity for public review:
 - Post on web and have hard copies for those without web access
 - Have written comment period
 - Conduct at least one public meeting
 - Devote one SAC meeting
5. (submittal date) Finalize report and submit to governor.

Appendix 1: Descriptions of Legal Requirements

Administrative Procedures Act (APA)

The APA requires that the public know of and be allowed to get involved with agency rulemaking before rules come into effect. Federal agencies propose a rule in the *Federal Register*,



IV. Management Plan Elements and Format

Elements

The following provides a general outline for what the management plan may eventually look like. It is adaptable for site-specific needs and is also designed to meet the NMSP's obligations under NEPA and NMSA. *NOTE: Italicized sections indicate those that are necessary for an EIS.*

I. Executive Summary (5-10 pages)

- *Preparers and acknowledgments*
- *What the management plan is*
- *What the management plan will do*
- How the management plan was developed (briefly)
- What the next steps are

II. Introduction (10-15 pages)

- What the National Marine Sanctuary Program is
- What management plan revisions are
- How management plan revisions are done
- How this draft management plan was developed (in detail)

III. _____ National Marine Sanctuary (*Affected Environment* including the resource assessment with consultations as appropriate as required under § 303(b)(3) of NMSA) (10-15 pages)

- Site history (administrative (e.g., designation, previous management plan highlights, etc.) and environmental changes)
- Resources/habitats/qualities
- Present and potential uses of the site

IV. *Management Plan/Preferred Alternative* (this is the five-year plan that will guide the Sanctuary until its next review) (25-50 pages)

- Overview of Management Plan, with a statement of purpose, rationale, goals, objectives, and actions.
- Action plan for each action listed in the management plan, including necessary steps, time table, location, responsible parties, known implementation costs, implementation resources, issues, and a list of related actions.

V. *Alternatives to the Management Plan*

VI. *Environmental and Socio-economic Consequences of Alternatives*



VII. Appendices

- Acronyms
- References
- *Recipients*
- *Comments and Responses (for FMP/FEIS)*

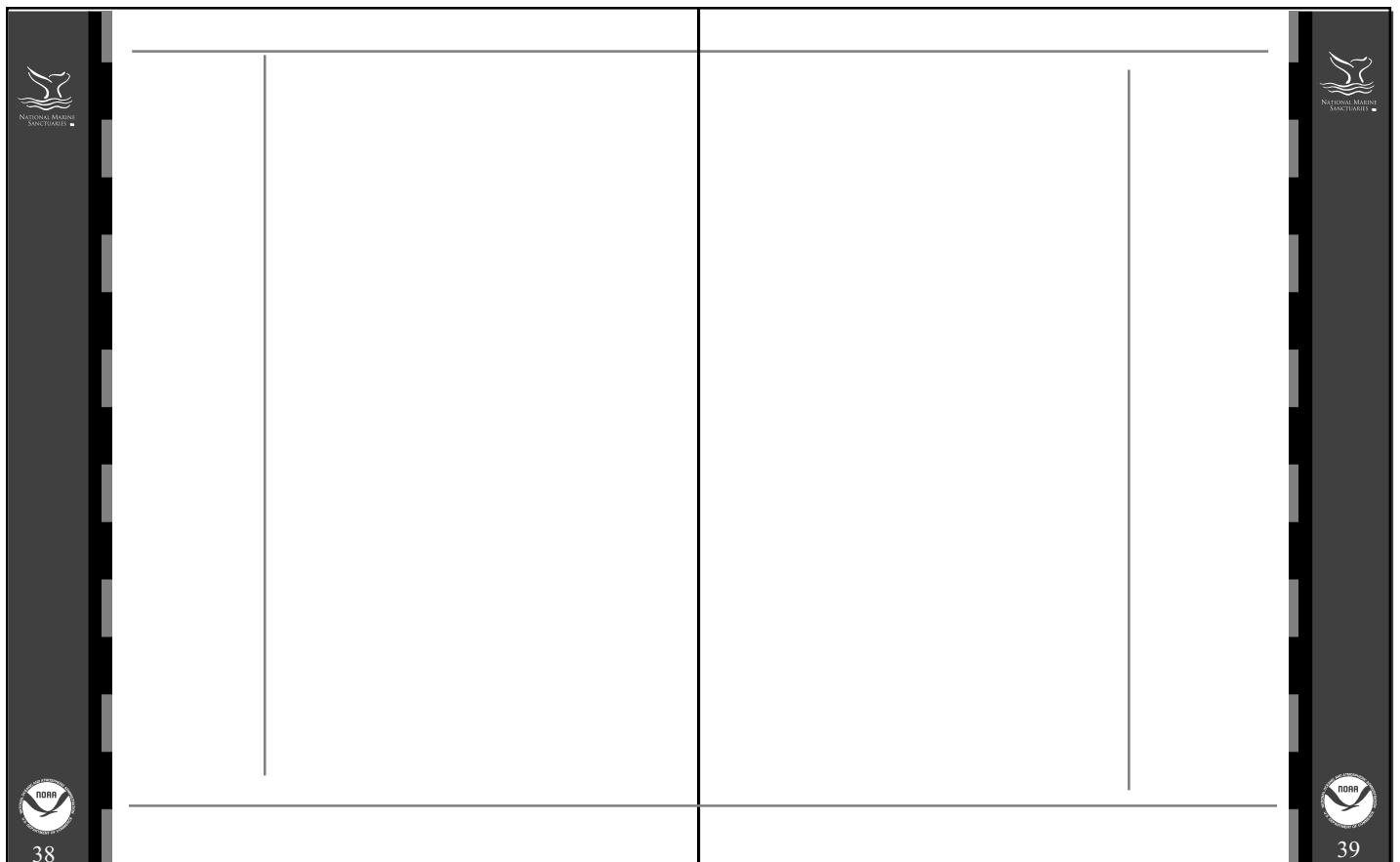
Format

The following pages contain sample layouts for the cover (Figure 4) and interior pages (Figure 5) of a management plan. While sites should adapt these formats for their needs, efforts should be made to try and keep the look as consistent as possible to help enhance the NMSP's system identity.

Figure 4: This figure shows a mockup of the cover of the EIS and/or management plan. The circular pictures at the left would be specific to each site. The cover is designed to be printed in color, and its “look” is consistent with the corporate appearance of the NMSP. Cover fonts and wording may be adapted to each site.



Figure 5: This figure shows a mockup of the interior pages of the EIS and/or management plan. The page is laid out with a side bar for notes or tables, but this may be removed if the site so desires. The pages are designed to be printed in black and white, and their “look” is consistent with the corporate appearance of the NMSP. Interior fonts and styles are to be determined by the site.



Acts:

- *Administrative Procedures Act*
- *Americans with Disabilities Act*
- *Federal Advisory Committee Act*
- *National Environmental Policy Act*
- *National Marine Sanctuaries Act*
- *Paperwork Reduction Act*
- *Regulatory Flexibility Act*

Executive Orders:

- *#12866 Cost-Benefit Analysis*

solicit public comment, review and consider comments received, and then issue a final rule, also in the *Federal Register*. APA will always figure into the management plan revision process if any regulations are included.

Americans with Disabilities Act (ADA)

The ADA affects any public meetings held by the NMSP, in that all meeting facilities must make reasonable accommodation for persons with disabilities.

Coastal Zone Management Act (CZMA)

The CZMA requires that each Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner that is, to the maximum extent practicable, consistent with the enforceable policies of Federally-approved state coastal zone management program. During the consultation process, the sanctuary will need to submit a consistency determination to the affected State agency (see the model in Appendix 3).

Federal Advisory Committee Act (FACA)

FACA governs the use of advisory committees by the Federal government. While the National Marine Sanctuaries Act specifically exempts Sanctuary Advisory Councils from its requirements, FACA could be implicated in situations where a site is working with a group of individuals (outside of meetings with solely Federal and/or State employees) in an effort to obtain some kind of consensus from that group.

National Environmental Policy Act (NEPA)

This act states that any proposal for a major Federal action significantly impacting the human environment needs to go through an environmental review process as outlined under NEPA (NOAA Administrative Order 216-6 in Appendix 4 outlines the procedures that the agency will use to conduct environmental reviews). If an agency is not certain about the level of impact, it can prepare an environmental assessment (EA), a document that leads to one of two possible paths: (1) issuing a Finding of No Significant Impact (FONSI) or (2) preparing an EIS containing a description of the action, alternatives, and impacts; putting a draft EIS out for comment; and then issuing the final EIS after all the comments have been received and considered. The EIS may be combined with a management plan



as one document, as long as it meets the requirements of NEPA. If an agency is certain of the need to prepare an EIS, it can bypass the EA step and go directly to the EIS process. Consult with GCOS, and NOAA's Policy and Strategic Planning Office to determine whether an EIS is necessary.

National Marine Sanctuaries Act (NMSA)

The NMSA has requirements in addition to the National Environmental Policy Act and the Administrative Procedure Act (see discussions above). Amendments to existing regulations or within the scope of activities in a designation document must comply with the procedures below, but need not activate the procedures outlined in section 304 of the NMSA. Any change in a term of designation (e.g., any regulation of activity not currently prohibited and not reasonably within the scope of activities subject to regulation in the designation document) means a Sanctuary must go through the 304 designation procedures to add to or change the terms of its designation. The NMSP must prepare an EIS if the 304 procedures are triggered. Along with the EIS comes consultation with other Federal agencies and the governor, at least one public hearing, and the chance for the Governor to object to any or all parts of the proposed change in State waters. While the Governor is reviewing, Congress gets a chance to review as well, both for 45 days of continuous session of Congress. Changes not objected to by the Governor become effective automatically after the 45-day review period.

Paperwork Reduction Act

If a Sanctuary is attempting any project or issuing a regulation that may impose an information collection requirement (such as an application or public survey), the requirement must be reviewed and approved by the Office of Management and Budget. Such reviews should be coordinated through NOAA's PRA officer (also see <http://www.rdc.noaa.gov/~pra/index.html>).

Regulatory Flexibility Act

The Regulatory Flexibility Act requires Federal agencies to consider the effects of their regulatory actions on small businesses and other small entities, and to minimize any undue disproportionate burden. If the regulations will have a significant economic impact on a substantial number of small busi-



nesses, then a Sanctuary will have to prepare initial and final regulatory flexibility analyses. The initial analysis must describe the impact of any proposed rule(s) on small entities and address:

- why the agency is considering regulatory action;
- the objectives and legal basis for the proposed rule(s);
- the number and kind of small entities to which the proposed rule(s) would apply;
- projected reporting and other compliance requirements of the rule(s);
- all federal rules that may duplicate, overlap, or conflict with the proposed rule(s);
- a description of alternatives to the proposed rule(s) that would minimize the impact on small entities; and
- a summary of advantages and disadvantages of the alternatives.

The final analysis is required to:

- summarize the issues raised by public comments on the initial analysis and NOAA's assessment of those issues;
- describe and estimate the number of small entities to which the rule will apply (or explain why no estimate is available);
- describe the actions taken by NOAA to minimize the economic impact on small entities;
- give the factual, policy, and legal reasons for selecting the alternative(s) adopted in the final rule(s); and
- explain why other alternatives were rejected.

Executive Order 12866 Cost-Benefit Analysis

Under Executive Order 12866, if a rule is determined to be significant, then a socioeconomic impact study (i.e., assessment of the costs and benefits of the regulatory action) be conducted.

Under 12866 a regulatory action is significant if the rule may:

- have an annual effect on the economy of \$100 million or more or adversely affecting in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
- raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set

forth in this Executive Order.

Appendix 3: Models

Federal Register Notices

Notice of Intent



Appendix 2: Rulemakings by the National Marine Sanctuary Program; General NMSA, NEPA, and APA Requirements¹

I. Rulemakings that do not change a term of designation² of a Sanctuary (i.e., do not automatically require an environmental impact statement under the NMSA):

- Determine if an issue or problem can be solved by a new regulation (or amending an existing regulation), and construct preliminary administrative record to support the action. An administrative record can consist of letters, e-mails, and conversation records; public records or comments; academic or technical articles, studies, and other documents; and “gray literature,” including popular articles and white papers prepared by the agency or by other agencies or experts. The amount of weight accorded to an item will vary.
- Prepare Advance Notice of Proposed Rulemaking for publication in the *Federal Register*. This is an optional step, and can be used to (1) raise public awareness and/or (2) collect public comments and other information to help strengthen the administrative record for rulemaking.
- Prepare the Proposed Rule for publication in the *Federal Register*.
- Conduct public review of the Proposed Rule. This will include the opportunity for the public to submit written comments, usually for a period of 30 to 45 days, and may include public hearings. Public hearings are not required but the NMSP usually holds at least one, particularly for controversial rulemakings.
- Prepare Final Rule for publication in the *Federal Register*, after reviewing and considering public comments.
- Implement Final Rule.

II. Rulemakings that necessitate a change in a term of designation of a Sanctuary or that otherwise require an environmental impact statement:

- Determine if an issue or problem can be solved by a new regulation (or amending an existing regulation) that necessitates a change a term of designation, and conduct scoping to determine the range of alternatives and the significant issues.

- Prepare a Draft Environmental Impact Statement (DEIS) or Draft Supplemental Environmental Impact Statement (DSEIS) that contain alternatives to respond to the issue or problem, the impacts of those alternatives, and the agency's preferred alternative. The proposed action that is the subject of the DEIS or DSEIS will be the Proposed Rule.
- Release the DEIS or DSEIS by publishing a notice of availability in the *Federal Register* and by providing copies to interested parties. Simultaneously, the Proposed Rule appears in the *Federal Register*.
- Conduct public review of the DEIS or DSEIS and Proposed Rule. This will include an opportunity for public comment of at least 45 days and must include at least one public hearing if the rulemaking necessitates a change in a term of designation for the Sanctuary.
- Prepare a Final Environmental Impact Statement (FEIS) or Final Supplemental Environmental Impact Statement (FSEIS). The FEIS or FSEIS will also address the proposed Final Rule. This step includes reviewing and responding to public comments.
- Release the FEIS or FSEIS by publishing a notice of availability in the *Federal Register* and by providing copies to interested parties. After a 30-day "cooling off" period, the Final Rule appears in the *Federal Register*.
- Submit the FEIS or FSEIS and Final Rule to Congress (and to the governor's office, if State waters are involved). The Final Rule will take effect after the close of a review period of 45 days of continuous session³ of Congress. If State waters are involved, and the affected governor certifies that the change in the term of designation (and therefore the Final Rule) is unacceptable, the Final Rule will not take effect in State waters.
- Implement Final Rule.

¹ Other applicable laws, executive orders etc. must be complied with.

² The terms of designation of a sanctuary include the geographic area of the sanctuary, the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value, and the types of activities that are subject to regulation to protect those characteristics.

³ Because Congress has recesses, 45 days of continuous session may actually take several months.

*Federal Register
Notices:*

- *Notice of Intent*
- *Adding Scoping Meetings*
- *Advance Notice of Proposed Rulemaking*
- *Proposed Rule*
- *Final Rule*

Format:

- *text: courier or courier new, 12 font, bolded and in caps as shown*
- *paragraphs: double-spaced, indented*
- *signature authority: Assistant Administrator of NOS*

Notice of Intent

Purpose:

This notice is used to officially let the public know that the site is about to under take a review and possible revision of its management plan. The notice may also be used to:

- *request public comment;*
- *schedule scoping meetings; and*
- *lay out initial thoughts and ideas (with some privisos).*



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Initiation of Review of Management Plan/Regulations of the Name National Marine Sanctuary;

Intent to Prepare Draft Environmental Impact Statement and Management Plan; Scoping Meetings

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Initiation of review of management plan/regulations; intent to prepare environmental impact statement; scoping meetings.

SUMMARY: The Name National Marine Sanctuary (__NMS or Sanctuary) was designated in date, and consists of *brief description of site*. The present management plan for the Sanctuary was completed in year. In accordance with Section 304(e) of the National Marine Sanctuaries Act, as amended, (NMSA) (16 U.S.C. 1431 et seq.), the Marine Sanctuaries Division (MSD) of the National Oceanic and Atmospheric Administration

(NOAA) is initiating a review of the management plan, to evaluate substantive progress toward implementing the goals for the Sanctuary, and to make revisions to the plan and regulations as necessary to fulfill the purposes and policies of the NMSA.

The proposed revised management plan will likely involve changes to existing policies and regulations of the Sanctuary, to address contemporary issues and challenges, and to better protect and manage the Sanctuary's resources and qualities. The review process is composed of four major stages: information collection and characterization; preparation and release of a draft management plan/environmental impact statement, and any proposed amendments to the regulations; public review and comment; preparation and release of a final management plan/environmental impact statement, and any final amendments to the regulations. NOAA anticipates completion of the revised management plan and concomitant documents will require approximately eighteen to twenty-four months.

NOAA will conduct public scoping meetings to gather information and other comments from individuals, organizations, and government agencies on the scope, types and significance of issues related to the sanctuary's management



plan and regulations. The scoping meetings are scheduled for *dates*, as detailed below.

DATES: Written comments should be received on or before *date*.

Scoping meetings will be held at:

- (1) *date, time, location*
- (2) *date, time, location*
- (3) *date, time, location*

ADDRESSES: Written comments may be sent to the *Name* National Marine Sanctuary (Management Plan Review), *address*. Comments will be available for public review at the same address.

Scoping meetings will be held at:

- (1) *street address*
- (2) *street address*
- (3) *street address*

FOR FURTHER INFORMATION CONTACT: *name, phone number, e-mail address*.

Authority: 16 U.S.C. Section 1431 et seq.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)



Name

Date

Assistant Administrator for
Ocean Services and Coastal Zone Management



NATIONAL MARINE
SANCTUARIES

*Adding Scoping
Meetings Notice*

Purpose:

This notice is used to officially notify the public if new scoping meetings have been added since the original notice was given. This notice may also extend the public comment period.

Adding Scoping Meetings

3510-08

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Initiation of Review of Management Plan/Regulations of the *Name* National Marine Sanctuary; Intent to Prepare Draft Environmental Impact Statement and Management Plan; Scoping Meetings

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Scoping meetings.

SUMMARY: The *Name* National Marine Sanctuary (__NMS or Sanctuary) was designated in date, and consists of *brief description of site*. The present management plan for the Sanctuary was completed in year. In accordance with Section 304(e) of the National Marine Sanctuaries Act, as amended, (NMSA) (16 U.S.C. 1431 et seq.), the Marine Sanctuaries Division (MSD) of the National Oceanic and Atmospheric Administration (NOAA) is initiating a review of the management



plan, to evaluate substantive progress toward implementing the goals for the Sanctuary, and to make revisions to the plan and regulations as necessary to fulfill the purposes and policies of the NMSA.

The proposed revised management plan will likely involve changes to existing policies and regulations of the Sanctuary, to address contemporary issues and challenges, and to better protect and manage the Sanctuary's resources and qualities. The review process is composed of four major stages: information collection and characterization; preparation and release of a draft management plan/environmental impact statement, and any proposed amendments to the regulations; public review and comment; preparation and release of a final management plan/environmental impact statement, and any final amendments to the regulations. NOAA anticipates completion of the revised management plan and concomitant documents will require approximately eighteen to twenty-four months. NOAA has already conducted # public scoping meetings (as announced in the notice in __ FR ____) to gather information and other comments from individuals, organizations, and government agencies on the scope, types and significance of issues related to the sanctuary's management



plan and regulations. Because of *reason*, NOAA has decided to conduct # additional scoping meetings.

DATES: Written comments should be received on or before *date*.

Scoping meetings will be held:

- (1) *date, time, location*
- (2) *date, time, location*
- (3) *date, time, location*

ADDRESSES: Written comments may be sent to the Gray' s Reef National Marine Sanctuary (Management Plan Review), 10 Ocean Science Circle, Savannah, Georgia 31411. Comments will be available for public review at the same address.

Scoping meetings will be held at:

- (1) *street address*
- (2) *street address*
- (3) *street address*

FOR FURTHER INFORMATION CONTACT: *name, phone number, e-mail address*.

Authority: 16 U.S.C. Section 1431 et seq.



(Federal Domestic Assistance Catalog Number
11.429 Marine Sanctuary Program)

<i>Name</i>	<i>Date</i>
Assistant Administrator for Ocean Services and Coastal Zone Management	



An Advance Notice of Proposed Rulemaking is an optional document that is used to:

- let the public know that the site is considering a new regulation; and/or*
- gather additional information by asking specific questions and requesting comments from the public.*

Advance Notice of Proposed Rulemaking

3510-08

DEPARTMENT OF COMMERCE

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

15 CFR Part 944

[Docket No.]

RIN 0648-AI06

Title of Action

AGENCY: Marine Sanctuaries Division (MSD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is considering *action*. This advance notice of proposed rulemaking (ANPR) discusses the reasons NOAA is considering *action*. NOAA is issuing this ANPR specifically to invite advice, recommendations, information and other comments from interested parties.

DATES: Comments must be received by (insert



date 30 days after publication in the Federal Register).

ADDRESSES: Comments should be sent to *name* at *address*. Comments will be available for public inspection at the same address.

FOR FURTHER INFORMATION CONTACT: *name, phone number, e-mail*.

SUPPLEMENTARY INFORMATION:

Background on action

NOAA is seeking advice, recommendations, information and other comments, with reasons, on whether NOAA should *action*. *List specific questions or subjects on which people should comment*.

Executive Order 12866

For purposes of Executive Order 12866, this advance notice of proposed rulemaking is determined to be not significant.

List of Subjects in 15 CFR Part 944

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Ma-



rine resources, Natural resources, Penalties,
Recreation and recreation areas, Reporting and
recordkeeping requirements, Research.

Federal Domestic Assistance Catalog Number
11.429

Marine Sanctuary Program

Name

Date

Assistant Administrator
for Ocean Services and Coastal Zone Management



Proposed Rule

3510-08

DEPARTMENT OF COMMERCE

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

15 CFR Part 922

[Docket No.]

RIN 0648-AI06

Title of Action

AGENCY: Marine Sanctuaries Division (MSD),
Office of Ocean and Coastal Resource Management
(OCRM), National Ocean Service (NOS), National
Oceanic and Atmospheric Administration (NOAA),
Department of Commerce (DOC).

ACTION: Proposed rule; notice of public
availability of draft environmental impact
statement/draft management plan.

SUMMARY: The National Oceanic and Atmospheric
Administration (NOAA) is proposing to *action*.
NOAA is issuing this proposed rule to provide
notice to the public and invite advice, recom-
mendations, information, and other comments
from interested parties on the proposed rule
and Draft Environmental Impact Statement/Draft
Management Plan (DSEIS/DMP). A public hearing
will be held; a separate notice of the date and

A Proposed Rule notifies the public of a new regulation that the site intends to enact; invites public comment; and schedules a public hearing, if so desired. The Proposed Rule may also lay out the major provisions of the draft management plan.



time will be published.

DATES: Comments must be received by (insert date 60 days after publication in the Federal Register).

ADDRESSES: Comments should be sent to *name* at *address*. Comments will be available for public inspection at the same address. Copies of the DSEIS/DMP are available from the same address.

FOR FURTHER INFORMATION CONTACT: *name, phone number, e-mail address*.

SUPPLEMENTARY INFORMATION:

I. Background

background on action and steps taken to date (e.g., issuing ANPR)

II. Comments and Responses (if applicable)

(1) **Comment:**

Response:

(2) **Comment:**

Response:

III. Summary of the Proposed Regulatory Amendment

IV. Miscellaneous Rulemaking Requirements

National Marine Sanctuaries Act

Section 304(a)(4) of the National Marine Sanctuaries Act, 16 U.S.C. 1434(a)(4), provides that the terms of designation may be modified only by the same procedures by which the original designation is made. Designations of National Marine Sanctuaries are governed by sections 303 and 304 of the NMSA, 16 U.S.C. 1433, 1434. Section 304 requires the preparation of an environmental impact statement, State consultation, at least one public hearing, and gubernatorial non-objection to the proposal as it pertains to State waters within the Sanctuary.

Section 304 of the NMSA also requires the Secretary to submit to the appropriate Congressional Committees, on the same day this notice is published, documents, including an executive summary, consisting of the terms of the proposed designation (or in this case, change thereof), the proposed regulations and the draft environmental impact statement/draft management plan. In accordance with section 304, the required documents are being submitted to the appropriate Congressional Committees.



National Environmental Policy Act

When changing a term of designation of a National Marine Sanctuary, section 304 of the NMSA, 16 U.S.C. 1434, requires the preparation of a draft environmental impact statement (DEIS), as provided by the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., and that the DEIS be made available to the public. NOAA has prepared a draft supplemental environmental impact statement/draft management plan on the proposal. The DSEIS/DMP is available at the addresses listed in the Address section of this proposed rule.

Executive Order 12866: Regulatory Impact

NOAA has concluded that this regulatory action is not significant within the meaning of section 3(f) of Executive Order 12866 because it will not result in:

(1) An annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, or public health and safety; (2) A serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) A material alteration of the budgetary impact of entitlements, grants, user fees,



or loan programs or rights and obligations of such recipients; or

(4) Novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Executive Order 12612: Federalism Assessment

NOAA has concluded that this regulatory action does not have sufficient federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration as follows:

text from certification memo

Accordingly, a Regulatory Flexibility Analysis was not prepared.

Paperwork Reduction Act

This proposed rule would not impose an information collection requirement subject to



review and approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 et seq.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

(Federal Domestic Assistance Catalog Number 11.429

Marine Sanctuary Program)

<u>Name</u>	<u>Date</u>
Assistant Administrator for Ocean Services and Coastal Zone Management	

Accordingly, for the reasons set forth above, 15 CFR Part 922 is proposed to be amended as follows:

PART 922—[AMENDED]

1. The authority citation for Part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 et seq.

2. *other regulatory changes*

Final Rule

3510-08

DEPARTMENT OF COMMERCE

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

15 CFR Part 922

[Docket No.]

RIN 0648-AI06

Title of Action

A Final Rule notifies the public of a new regulation that the site has enacted; responds to public comment; and provides a date by which the rule become effective (if the 45-day Congressional review period is not needed). The Final Rule may also lay out the major provisions of the final management plan.

AGENCY: Marine Sanctuaries Division (MSD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule; notice of public availability of final environmental impact statement/final management plan.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is *action*.

DATES: Congress and the Governor of the State of *State* have forty-five days of continuous session of Congress beginning on the day on which this document is published to review the *document*. After the forty-five day review pe-



riod, the *document* automatically becomes final and takes effect, unless the Governor certifies within the forty-five day period to the Secretary of Commerce that the *document* is unacceptable. In such case, the *document* cannot take effect in the area of the Sanctuary lying within the seaward boundary of the State of *State*, and the original *document* shall remain in effect. NOAA will publish in the *Federal Register* a notice of effective date following the forty-five day review period.

ADDRESSES: Copies of the Final Environmental Impact Statement/Final Management Plan supporting this action may be obtained from *name* at *address*.

FOR FURTHER INFORMATION CONTACT: *name*, *phone number*, *e-mail*.

SUPPLEMENTARY INFORMATION:

I. Background

background on action and steps taken to date (e.g., issuing ANPR)

Pursuant to section 304(a)(4) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1434(a)(4)), the terms of designation of a na-



tional marine sanctuary may be modified only by the same procedures by which the original designation is made. Therefore, NOAA must comply with the procedures by which the Sanctuary was designated. Designations of national marine sanctuaries are governed by sections 303 and 304 of the NMSA (16 U.S.C. 1433, 1434). Section 304 requires the preparation of an environmental impact statement, State consultation, at least one public hearing, and gubernatorial non-objection to the proposal as it pertains to State waters within the Sanctuary (this final rule pertains entirely to State waters). This final rule is therefore accompanied by a Final Supplemental Environmental Impact Statement/Final Management Plan (FSEIS/FMP). This final rule represents NOAA's preferred alternative as discussed in the FSEIS/MP. The Governor of State has forty-five days of continuous session of Congress beginning today to certify an objection to this final rule, should he make such a determination. If the Governor certifies an objection to this final rule, it will not take effect and the original prohibition will remain in effect.

NOAA issued an Advance Notice of Proposed Rulemaking (ANPR) on date (___ FR ____), to



inform the public of the issue under consideration and to invite general advice, recommendations, information, and other comments from interested parties. The comment period closed on *date*, with # comments received. NOAA issued a proposed rule on *date* (__ FR ____), to inform the public of NOAA's proposed course of action and to invite comments from interested parties. The comment period closed *date*, with # written comments received. A public hearing was held *date*, with # verbal comments received. A general summary of written and verbal comments and NOAA's responses follows.

II. Comments and Responses

(1) Comment:

Response:

(2) Comment:

Response:

III. Summary of the Proposed Regulatory Amendment

V. Miscellaneous Rulemaking Requirements

National Marine Sanctuaries Act

Section 304(a)(4) of the National Marine Sanctuaries Act, 16 U.S.C. 1434(a)(4), provides that the terms of designation may be



modified only by the same procedures by which the original designation is made. Designations of National Marine Sanctuaries are governed by sections 303 and 304 of the NMSA, 16 U.S.C. 1433, 1434. Section 304 requires the preparation of an environmental impact statement, State consultation, at least one public hearing, and gubernatorial non-objection to the proposal as it pertains to State waters within the Sanctuary.

Congress and the Governor of the State of *State* have forty-five days of continuous session of Congress beginning on the day on which this document is published to review the *document* before it takes effect. After the forty-five day review period, the *document* automatically becomes final and takes effect, unless the Governor of the State of *State* certifies within the forty-five day period to the Secretary of Commerce that the amendment to the Designation Document and regulations is unacceptable. In such case, the *document* cannot take effect in the area of the Sanctuary lying within the seaward boundary of the State of *State*, and the original prohibition shall remain in effect. NOAA will publish in the *Federal Register* a notice of effective date fol-



lowing the forty-five day review period.

National Environmental Policy Act

When changing a term of designation of a National Marine Sanctuary, section 304 of the NMSA, 16 U.S.C. 1434, requires the preparation of an environmental impact statement (EIS) as provided by the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that the EIS be made available to the public. NOAA prepared and made available to the public a draft supplemental environmental impact statement/draft management plan on the *action*. A final environmental impact statement/final management plan has been prepared and is available to the public from the addresses listed at the beginning of this notice.

Executive Order 12866: Regulatory Impact

NOAA has concluded that this regulatory action is not significant within the meaning of section 3(f) of Executive Order 12866 because it will not result in:

(1) An annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, or public health and safety; (2) A serious inconsistency or



otherwise interfere with an action taken or planned by another agency;

(3) A material alteration of the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of such recipients; or

(4) Novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Executive Order 12612: Federalism Assessment

NOAA has concluded that this regulatory action does not have sufficient federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration as follows:

text from certification memo

Accordingly, a Regulatory Flexibility Analysis was not prepared.



Paperwork Reduction Act

This rule will not impose an information collection requirement subject to review and approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 et seq.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

(Federal Domestic Assistance Catalog Number 11.429

Marine Sanctuary Program)

Name

Date

Assistant Administrator
for Ocean Services and Coastal Zone Management

Accordingly, for the reasons set forth above, 15 CFR Part 922 is amended as follows:

PART 922—[AMENDED]

1. The authority citation for Part 922 continues to read as follows:



Authority: 16 U.S.C. 1431 et seq.

2. *Other changes*

A Notice of Effective Date is used to let the public know when a new regulation and/or new management plan takes effect, after the 45 days of review by Congress.

Notice of Effective Date

3510-08

DEPARTMENT OF COMMERCE

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

15 CFR Part 922

[Docket No.]

RIN 0648-AI06

Title of Action; Confirmation of Effective Date

AGENCY: Marine Sanctuaries Division (MSD),
Office of Ocean and Coastal Resource Management
(OCRM), National Ocean Service (NOS), National
Oceanic and Atmospheric Administration (NOAA),
Department of Commerce (DOC).

ACTION: Confirmation of effective date.

SUMMARY: On *date*, the National Oceanic and
Atmospheric Administration (NOAA) published a
final rule (FR) to *action*. Under the
National Marine Sanctuaries Act, the *document*
would automatically take effect at the end of
45 days continuous session of Congress begin-
ning on *date*, unless the Governor of *State* cer-
tified to the Secretary of Commerce the docu-
ment as unacceptable in State waters. The 45-
day review period ended on *date*. This document



confirms the effective date as *date*.

EFFECTIVE DATE: The final rule published on
date (__ FR ____) shall take effect on *date*.

FOR FURTHER INFORMATION CONTACT: *name, ad-
dress, phone number, e-mail*.

(Federal Domestic Assistance Catalog Number
11.429
Marine Sanctuary Program)

<u>Name</u>	<u>Date</u>
Assistant Administrator for Ocean Services and Coastal Zone Management	



Memoranda:

- Director to AA
- AA to Asst Secretary
- Asst Secretary to Asst GC
- Asst GC to SBA
- Asst Secretary to Secretary

Format:

- text: courier or courier new, 12 font, in caps as shown
- paragraphs: single-spaced within each paragraph, double-spaced between paragraphs, no indentation

Purpose:

- Requests the clearance of the AA of NOS on the attached document;
- Requests clearance of AA on a memo to the Secretary

Clearance Memoranda

Office Director to Assistant Administrator, NOS

MEMORANDUM FOR: *Name*
 Assistant Administrator

FROM: *Name*
 Director

SUBJECT: *Name and Type of Document*
 Being Cleared

Attached for your clearance is *name and type of document which what document does*. An Information Memorandum to the Secretary is also attached. *Brief background on need for the document and summary of steps taken so far (e.g., scoping meetings held, studies conducted, etc.)*

Expected level of controversy of action/document, reaction from impacted parties, steps taken to mitigate controversy

Next steps, if any

Attachments

Assistant Administrator, NOS to Assistant Secretary,
NOAA

MEMORANDUM FOR: *Name*
 Assistant Secretary for
 Oceans and Atmosphere

FROM: *Name*
 Assistant Administrator

SUBJECT: *Name and Type of Document*
 Being Cleared

Attached for your clearance and transmittal to *name*, Assistant General Counsel for Legislation and Regulations, Department of Commerce, is a *name and type of document* which *what document does*. An Information Memorandum to the Secretary is also attached. *Brief background on need for the document and summary of steps taken so far (e.g., scoping meetings held, etc.)*

Expected level of controversy of action/document, reaction from impacted parties, steps taken to mitigate controversy

Next steps, if any

If you approve, please so indicate and transmit the attached memorandum and its attachments to *name of Assistant General Counsel for Legislation and Regulations* for coordination with OMB.

This rule has been determined not to be significant for purposes of E.O. 12866.

Cleared by NOAA General Counsel Date

Name *Date* Concur Do Not Concur
Assistant Secretary
for Oceans and Atmosphere

Attachments

Purpose:

- *Requests the clearance of the Assistant Secretary of NOAA on the attached document;*
- *Requests clearance of Assistant Secretary on a memo to the Secretary*



NATIONAL MARINE
SANCTUARIES

Purpose:

- *Requests the clearance of the Assistant General Counsel on Legislation and Regulation for DOC on the attached document;*
- *Transmits a certification to the Small Business Administration that the action will not have a significant economic effect on a substantial number of small entities (if that is the case).*

Assistant Secretary, NOAA to Assistant General Counsel
for Legislation and Regulation, DOC

MEMORANDUM FOR: *Name*
 Assistant General Counsel for
 Legislation and Regulation

FROM: *Name*
 Assistant Secretary for
 Oceans and Atmosphere

SUBJECT: *Name and Type of Document*
 Being Cleared

*Attached is a name and type of document which
what document does. An Information Memorandum
to the Secretary is also attached. Brief back-
ground on need for the document and summary of
steps taken so far (e.g., scoping meetings
held, studies conducted, etc.)*

*Expected level of controversy of action/docu-
ment, reaction from impacted parties, steps
taken to mitigate controversy*

Also attached for your signature is a memoran-
dum to *name*, Chief Counsel for Advocacy for the
Small Business Administration, certifying that
the final rule will not have a significant eco-
nomic effect on a substantial number of small
entities.

Please notify *name of attorney*, GCOS at (301)
713-2969 upon clearance, or if you have any
questions regarding this
final rule.

Attachments



Assistant General Counsel for Legislation and Regulation, DOC to Chief Counsel for Advocacy, Small Business Administration

MEMORANDUM FOR: Name
 Chief Counsel for Advocacy
 Small Business Administration

FROM: Name
 Assistant General Counsel
 for Legislation and Regulation

SUBJECT: Certification Under Section
 605(b) of the Regulatory
 Flexibility Act for Name of
 Document/Action

I certify that the attached final rule issued under authority of the National Marine Sanctuaries Act, 16 U.S.C. 1431 et seq. will not have a significant economic impact on a substantial number of small entities. The final rule action of final rule.

Brief background

Justification for certification

Attachment

Purpose:

- *Certifies to the Small Business Administration that the action will not have a significant economic effect on a substantial number of small entities (if that is the case).*



Purpose:

- *Provides information to the Secretary of Commerce*

Assistant Secretary, NOAA to Secretary, DOC (Informational Memorandum)

INFORMATION MEMORANDUM FOR THE SECRETARY

FROM: *Name*
 Assistant Secretary for Oceans and
 Atmosphere

SUBJECT: *Name and Type of Document Being
 Cleared*

I. SUMMARY

The National Ocean Service (NOS) is issuing a final rule which *action of rule*.

II. DISCUSSION

Brief background

Expected level of controversy of action/document, reaction from impacted parties, steps taken to mitigate controversy



Consultation Memoranda and Letters

Office Director to NMFS, ESA Section 7 Consultation

MEMORANDUM FOR: *Name*
Director
Office of Protected Resources
NMFS

FROM: *Name*
Director

SUBJECT: Section 7 Consultation Under
the Endangered Species Act for
Action

Background and reason for action By this memorandum, the National Marine Sanctuary Program (NMSP) is requesting NMFS/OPR to provide any information, recommendations, or other comments on MSD's considered course of action.

In conformance with 50 CFR § 402.13 and 402.14, the NMSP also requests a determination as to whether a formal consultation pursuant to Section 7 of the Endangered Species Act (ESA), as amended, is necessary with regard to this considered course of action. We have also contacted the U.S. Fish and Wildlife Service regarding this requirement. We believe that a formal consultation will be *(or will not be)* necessary as *reasons*.

Please submit any information, recommendations, or comments, and NMFS' determination regarding formal consultation to *name* by *date*. *Name* can also answer any questions you might have, and can be reached at *phone number*. Thank you for your assistance on this action.

Attachment

Consultation Memos and Letters:

- *ESA Section 7 consultation with NMFS*
- *ESA Section 7 consultation with USFWS*
- *DOI resource assessment*
- *DOD, DOE, DOT, EPA general consultation*
- *Congressional consultation*
- *Federal consistency consultation with State CZM agency*
- *State agency general consultation*
- *Gubernatorial consultation*

Format:

- *text: courier or courier new, 12 font, in caps as shown*
- *paragraphs: single-spaced within each paragraph, double-spaced between paragraphs, no indentation*

Purpose:

- *Requests NMFS to certify that formal consultation will not be necessary (if that is the case)*



Purpose:

- *Requests USFWS to certify that formal consultation will not be necessary (if that is the case)*

Office Director to USFWS, ESA Section 7 Consultation

Name

Director

U.S. Fish and Wildlife Service

Department of the Interior

1849 C Street, N.W.

Washington, D.C. 20240

Dear *Name*:

Background and reason for action By this letter, the National Marine Sanctuary Program (NMSP) is requesting the Fish and Wildlife Service to provide any information, recommendations, or other comments on this considered course of action.

In conformance with 50 CFR § 402.13 and 402.14, the NMSP also requests a determination as to whether a formal consultation pursuant to Section 7 of the Endangered Species Act (ESA), as amended, is necessary with regard to this considered course of action. We have also contacted the National Marine Fisheries Service regarding this requirement. We believe that a formal consultation will be *(or will not be)* necessary as *reasons*.

The NMSP requests that the Fish and Wildlife Service respond to this letter by *date*. If you have any questions or need additional information, please contact *name* at *phone number*. Thank you for your assistance on this action.

Sincerely,

Name

Director

Enclosure



Office Director to DOI, Resource Assessment Consulta-
tion

Name

Director

Office of Environmental Policy and Compliance

Department of the Interior

1849 C Street, N.W.

Washington, D.C. 20240

Dear Name:

Background and history of action

Section 303(b)(3) of the National Marine Sanctuaries Act (NMSA) requires that, as part of the preparation of an Environmental Impact Statement, the Secretary of Commerce consult with the Department of the Interior and draft a "resource assessment report" that documents present and potential uses of the Sanctuary. The National Marine Sanctuary Program (NMSP) therefore requests DOI to provide any information, recommendations, or other comments on the document or action.

To ensure that any information, recommendations, or comments are considered in the preparation of the DSEIS, I would appreciate your response by date. If you require further clarification on this issue please contact name at phone number. We appreciate your assistance in this matter.

Sincerely,

Name

Director

Enclosure

Purpose:

- Requests DOI to provide information or comments for the resource assessment report



Purpose:

- *Requests a federal agency to provide information or comments on the proposed action*

Recipients:

*Department of Defense
Department of Energy
Department of
Transportation
Environmental Protection
Agency*

Office Director to General Federal Agency

Name

Title

Name of Department

Address

Washington, D.C.

Dear *Name*:

Background and history of action This process includes consulting with other Federal and State agencies that might be affected or interested.

Therefore, the National Marine Sanctuary Program (NMSP) requests that you consider and provide any information, recommendations, or comments on the proposed course of action.

To ensure that any comments regarding the proposed course of action are considered in due time, I would appreciate receiving your comments by *date*. If further clarification of this issue is required please contact *name* at *phone number*. We appreciate your assistance on this action.

Sincerely,

Name

Director

Enclosure



Office Director to Congressional Member

The Honorable *Name*

Title

Washington, D.C. 20510 or 20515

Dear Mr. Speaker:

Background and history of action This process includes consulting with other Federal and State agencies that might be affected or interested. In this case it means obtaining Congressional approval.

As *title*, NOAA requests that you consider this proposed regulatory change and provide us with your comments. To ensure that any comments regarding the action are given due consideration, I would appreciate receiving your comments by *date*. If a response is not received by that date, NOAA will assume that you concur with the action and do not have any concerns.

Thank you for your assistance on this action. If further clarification of this issue is required please contact *name* at *phone number*.

Sincerely,

Name
Director

Enclosure

Purpose:

- Requests a Congressional member to provide information or comments on the proposed action

Recipients:

The Honorable Name
Speaker of the House of Representatives
Washington, DC 20515

The Honorable Name
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Name
Minority Leader
House of Representatives
Washington, DC 20515

The Honorable Name
Minority Leader
United States Senate
Washington, DC 20510

The Honorable Name
Chair, Resources Committee
United States House of Representatives
Washington, DC 20515

The Honorable Name
Chair, Committee on Commerce, Science, and Transportation
United States Senate
Washington, DC 20510

The Honorable Name
President of the Senate
Washington, DC 20510

Purpose:

- *Requests the State CZM agency to certify that the action is consistent with the State's CZM plan (if that is the case)*

Office Director to State CZM Agency, Federal Consistency

Name

Title

Agency

Address

Address

Dear *Name*:

The CZMA requires that "each federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved state management programs." 16 U.S.C. § 1456(c)(1)(A). *State* has a federally approved Coastal Management Program (CMP).

Based upon the following information, data and analysis the National Marine Sanctuary Program (NMSP) has determined that the management plan is consistent to the maximum extent practicable with the enforceable policies of *State's* CMP. Upon receipt of this consistency determination the *State* CMP is notified that it has 45 days (plus any applicable extension under 15 C.F.R. § 930.41(b)) from the receipt of this letter in which to agree or disagree with the NMSP's determination. The agreement or disagreement of the *State* CMP with the NMSP's consistency determination shall be sent to: *name and address*.

The management plan will *insert a detailed description of the management plan*.

The NMSP has determined that the management plan affects the land or water uses or natural resources of the *State's* coastal zone in the following manner:

provide analysis of coastal effects or reference pages of NEPA document if appropriate.



The NMSP has evaluated the following applicable enforceable policies of the *State CMP*: *describe applicable State CMP enforceable policies and include evaluation of the activity's consistency with the enforceable policies.*

Sincerely,

Name
Director
NMSP

Enclosure



Purpose:

- *Requests a state agency to provide information or comments on the proposed action*

Recipients:

- *State Parks Agency*
- *State Fish/Wildlife Agency*
- *State Tourism Agency*

Office Director to General State Agency

Name

Title

Name of Agency

Address

Address

Dear *Name*:

Background and history of action This process includes consulting with other Federal and State agencies that might be affected or interested.

As the State agency with jurisdiction over *resources*, NOAA requests that you consider and provide any information, recommendations, and other comments to NOAA by *date*, for due consideration.

We look forward to working with you during this process. Please contact *name* at *phone number* if you have any questions.

Sincerely,

Name

Director

Enclosure



Office Director to Governor

The Honorable *Name*
Governor of *State*
address
address

Dear Governor *Wilson*:

Background and history of action This process includes consulting with other Federal and State agencies that might be affected or interested. The National Marine Sanctuary Program (NMSP) has notified, by letter, *list of state agencies* and requested these agencies to provide information, recommendations, or comments. All information, recommendations and comments will be considered in *course of action*.

This letter is to inform you that the NMSP is considering the course of action described above and requests your office to provide any information, recommendations or comments on this matter. Should the NMSP move forward this course of action, under the National Marine Sanctuaries Act, you will have 45 days of continuous session of Congress to review *action*. During that period, should you certify to the Secretary of Commerce that the rule and modification is unacceptable, it will not take effect in the State waters of the Sanctuary.

If additional information is required, please contact *name* at *phone number*. We look forward to working with the State of *State* as this process goes forward.

Sincerely,

Name
Director

Enclosure

Purpose:

- *Requests the Governor to provide information or comments on the proposed action*



Transmittal Memos:

- Governor
- Congressionals
- GAO/Congressionals

Format:

- text: courier or courier new, 12 font
- paragraphs: single-spaced within each paragraph, double-spaced between paragraphs, no indentation

Purpose:

- transmits final rule/ final management plan to the Governor for his/her 45 days of review

Transmittal Memoranda

Office Director to Governor

The Honorable *Name*

Governor of *State*

address

Dear Governor *Name*:

On behalf of the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, I am pleased to submit *document* to *action*.

description/background of action

Under section 304(b) of the National Marine Sanctuaries Act, you have 45 days of continuous session of Congress beginning today to review the document before it takes effect. After the 45-day review period, the *document/action* automatically becomes final and takes effect, unless you certify within the 45-day period to the Secretary of Commerce that the amendment to the management plan and regulations is unacceptable. In such case, the amendment cannot take effect in the area of the Sanctuary lying within the seaward boundary of the State of *State*. NOAA will publish in the *Federal Register* a notice of effective date following the 45-day review period.

Sincerely,

Name
Director

Enclosure



Office Director to Congressional Members, Informational Transmittal

The Honorable *Name*

United States Senate or House of Representatives

Washington, D.C. 20510 or 20515

Dear Senator or Representative *Name*:

On behalf of the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, I am pleased to submit *document to action*. This document is submitted in compliance with section 304 of the National Marine Sanctuaries Act.

description/background of action

Under section 304(b) of the National Marine Sanctuaries Act, the Governor of *State* has 45 days of continuous session of Congress beginning today to review the amendment to the management plan and regulations before they take effect. After the 45-day review period, the *action/document* automatically becomes final and takes effect, unless the Governor certifies within the 45-day period to the Secretary of Commerce that the *action/document* is unacceptable. In such case, the *action/document* cannot take effect in the area of the Sanctuary lying within the seaward boundary of the State of *State*. NOAA will publish in the *Federal Register* a notice of effective date following the 45-day review period.

Sincerely,

Name
Director

Enclosures

Purpose:

- *transmits final rule/ final management plan to the Congressional representatives from the affected area(s) for their 45 days of review*



NATIONAL MARINE
SANCTUARIES

Purpose:

• *transmits final rule/
final management plan
to GAO and Congress-
sional leadership for their
review*

Recipients:

Name

*General Counsel
General Accounting Office
441 G Street, N.W., Room
7175
Washington, DC 20548*

*The Honorable Name
Speaker of the House of
Representatives
Washington, DC 20515*

*The Honorable Name
President of the Senate
Washington, DC 20510*

Office Director to GAO and Congress for Congressional

Review

Name

Title

Address

Address

Dear Name:

Enclosed is a *document* that *action*. This rule is being submitted for purposes of Congressional review under chapter 8 of Title 5, United States Code.

This rule is not a major rule under Executive Order 12866. A copy of the certification to the Chief Counsel for Advocacy for the Small Business Administration (under section 605(b) of the Regulatory Flexibility Act) stating that the rule will not have a significant economic impact on a substantial number of small entities is enclosed. This rule contains no Federal mandates for State, local, and tribal governments or the private sector; therefore, this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Sincerely,

Name

Director

Enclosures



General Onepager

_____ National Marine Sanctuary Management Plan Revision

What is the National Marine Sanctuary Program?

In 1972 Congress established the National Marine Sanctuary Program (NMSP) to protect special natural and cultural areas of the marine environment. There are now 12 sanctuaries, ranging from the one-square mile sanctuary protecting the historic wreck of the *USS Monitor* to the 5,000-square miles sanctuary encompassing the splendor of the Monterey Canyon. The _____ National Marine Sanctuary (___NMS) *language about specific site*

What are management plans and why are they being revised?

Management plans are the site-specific documents that the NMSP uses to manage individual sanctuaries. These plans set priorities, contain regulations, present existing programs and projects, and guide the development of future activities. The Management Plan for the ___NMS was completed in 19___. It does not contain performance indicators to evaluate the effectiveness of the sanctuary and the NMSP, and also does not incorporate state-of-the-art concepts and practices associated with management of marine protected areas. Consequently, as ___NMS matured and become a vital part of our communities and region, the management plans may no longer reflect evolving resource protection issues.

What approach will you take to management plan revisions?

The management plan revision process will be adapted to the needs and resources of the ___NMS, and will be driven by site-specific issues. Our local staff will work closely together with staff from our national program office and with the public throughout the process. We hope to do most of the work locally, including using local technical resources. We also will work to keep both the revision process and the resulting management plan as simple and straightforward as possible.

How will you revise management plans?

The management plan revision will be conducted through an interactive, public process that will take about 18 to 24 months. We will begin the process by reviewing the existing management plan and other documents. We will also involve and interact with the public and user groups—such as fishers, researchers, educators, conservation groups, and other government agencies—most likely through a series of informal meet-



ings and workshops and formal public hearings. Our Sanctuary Advisory Councils will be extensively engaged in the revision process.

The revised draft management plan is likely to contain a series of action plans to address both specific issues and general management needs. We will make the draft management plan available for public review, take written comments, and host one or more public hearings for people to provide oral comments. After the close of the public comment period, we will consider the comments before issuing the final management plan.

What kind of changes should I expect?

Since the management plan will evolve as we move through the revision process, it is hard to say now what changes, if any, will occur. Some revisions may be very obvious, such as crafting new regulations or making deletions to existing regulations. Some changes may not be visible to the public, such as ways we work within our own office or with other government agencies. Whatever the revision, there will be numerous opportunities for the public to let us know what they think.

How can I be involved?

We encourage you become involved in the management plan revision process as an informed member of our sanctuary's community. Let us know your concerns at the public meetings so we know what issues need to be addressed. Take a look at the draft management plan and give us your thoughts. NOAA will provide ample notice of each meeting through various media outlets, including notices in local papers and on web pages. The draft and final management plans and other related documents will also be accessible for review on the Internet.

Where can I get more information?

For more information call our office at (____) ____-____ or contact:

Management Plan Team
National Marine Sanctuary Program
1305 East-West Highway, N/ORM6
Silver Spring, Maryland 20910



Appendix 4: NOAA Guidance on Environmental Reviews

ENVIRONMENTAL REVIEW PROCEDURES

FOR IMPLEMENTING

THE NATIONAL ENVIRONMENTAL POLICY ACT

Issued 06/03/99; Effective 05/20/99

SECTION 1. PURPOSE.

SECTION 2. BACKGROUND.

SECTION 3. NOAA POLICIES.

SECTION 4. DEFINITIONS.

SECTION 5. IMPLEMENTING PROCEDURES.

SECTION 6. INTEGRATING NEPA INTO NOAA LINE OF
FICE PROGRAMS.

SECTION 7. INTEGRATING NEPA WITH OTHER ORDERS.

SECTION 8. EFFECT ON OTHER ISSUANCES.

EXHIBITS 1 - 9

SECTION 1. PURPOSE.

.01 Founding Legislation. The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.) is the foundation of modern American environmental protection in the United States and its commonwealths, territories, and possessions. NEPA requires that Federal agency decisionmakers, in carrying out their duties, use all practicable means to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans. NEPA provides a mandate and a framework for Federal agencies to consider all reasonably foreseeable environmental effects of their proposed actions and to involve and inform the public in the decisionmaking process.

.02 Subjects Addressed by this Order.

a. The Order describes NOAA's policies, requirements, and procedures for complying with NEPA and the implementing regulations issued by the Council on Environmental Quality (CEQ) as codified in Parts 1500-1508 of Title 40 of the Code of Federal Regulations (40 CFR Parts 1500-1508) and those issued by the Department of Commerce (DOC) in Department Administrative Order (DAO) 216-6, Implementing the National Environmental Policy Act. The



Order incorporates the requirements of Executive Order (E.O.) 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Also, the Order reiterates provisions to E.O. 12114, Environmental Effects Abroad of Major Federal Actions, as implemented by DOC in DAO 216-12, Environmental Effects Abroad of Major Federal Actions.

b. Certain subjects addressed in this Order warrant special emphasis at the beginning. The following warrant such emphasis:

1. NOAA's policy has been, and continues to be, that the scope of its analysis will be to consider the impacts of actions on the marine environment both within and beyond the U.S. Exclusive Economic Zone (EEZ). (See Sections 3.02 and 7.01 of this Order.) 2. A proposed action, in conceptual stages, does not require an environmental review until it has an established goal and is preparing to make a decision on how to establish that goal. At that stage, the proposed action is subject to environmental review.

2. This Order addresses any Federal action whose effects may be major and are potentially subject to NOAA's control and responsibility. (Examples of such are provided in Sections 4.01m. and 6.01a. of this Order.)

.03 Revisions. This issuance is a complete revision and update to the Order. Major changes include: incorporation of the requirements of E.O. 12898 and E.O. 13112; addition and expansion of specific guidance regarding categorical exclusions, especially as they relate to endangered species, marine mammals, fisheries, habitat restoration, and construction activities; expansion of guidance on considering cumulative impacts and tiering in the environmental review of NOAA actions; and inclusion of a NOAA policies statement regarding the fulfillment of NEPA requirements. Revisions also have been made to format and content to promote clarity and ease of use.

SECTION 2. BACKGROUND.

.01 Authorities and References.

a. National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 et seq.

b. CEQ Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, as codified at 40 CFR Parts 1500 to 1508.



- c. E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.
- d. E.O. 13112, Invasive Species.
- e. E.O. 13089, Coral Reef Protection.
- f. DAO 216-6, Implementing the National Environmental Policy Act.
- g. E.O. 12114, Environmental Effects Abroad of Major Federal Actions.
- h. DAO 216-12, Environmental Effects Abroad of Major Federal Actions. .02 Responsibilities.
 - a. NEPA Coordinator. The NEPA Coordinator, within NOAA's Office of Policy and Strategic Planning, is responsible for ensuring NEPA compliance for NOAA. To accomplish, the NEPA Coordinator shall:
 - 1. review and provide final clearance for all NEPA environmental review documents covered by this Order;
 - 2. after providing final clearance, sign all transmittal letters for NEPA environmental review documents disseminated for public review;
 - 3. develop and recommend national policy, procedures, coordination actions or measures, technical administration, and training necessary to ensure NOAA's compliance with NEPA;
 - 4. provide liaison between NOAA and the CEQ, including consulting with CEQ on emergencies and making pre-decision referrals to CEQ;
 - 5. provide liaison with the Environmental Protection Agency (EPA) on NEPA matters; and
 - 6. provide general guidance on preparation of NEPA documents, which includes: approving criteria regarding the appropriate document to be prepared; working with Line, Staff, and Program Offices (LO/SO/PO) and their designated Responsible Program Managers (RPMs) to establish categorical exclusions; establishing and/or approving criteria to define "significant"; providing consultation, as requested; coordinating NOAA's comments on EISs prepared by other Federal agencies; and monitoring DOC activities for NEPA compliance.
 - b. Assistant Administrators and SO/PO Directors. Subject to concurrence by the NEPA Coordinator, the Assistant Administrators (AAs), SO/PO Directors, or their delegates, through the designated RPM, are



responsible for determining whether Federal actions undertaken, including those undertaken by Federal, state, local, or tribal governments in conjunction with the agency, are assessed in accordance with the NEPA process or are excluded from that process. The AAs and SO/PO Directors shall:

1. designate an RPM for each proposed action subject to the NEPA process within their functional area, and provide the NEPA Coordinator with the RPM's name, title, telephone number, and specific action for which s/he is responsible; and
2. as appropriate, provide the NEPA Coordinator with the name, title, and telephone number of any individual who has been delegated signature authority for approving and transmitting relevant materials to the NEPA Coordinator on behalf of the AA or SO/PO Director, in accordance with this Order.

c. **Responsible Program Manager (RPM).** The RPM is the individual designated by the AA or SO/PO Director to carry out specific proposed actions in the NEPA process within an assigned functional area. The RPM may be a Regional Administrator, a Science Center Director, a Laboratory Director, or a program director within a Line, or Staff, or Program Office. The designated RPM, subject to approval of the AA or SO/PO Director or delegate, and subject to concurrence by the NEPA Coordinator, shall:

1. determine whether Federal actions undertaken, including those undertaken by Federal, state, local or tribal governments in conjunction with the agency, are assessed in accordance with the NEPA process or are excluded from that process; and
2. determine the appropriate type of environmental review needed and submit all NEPA documents and associated letters and memoranda to the appropriate AA or SO/PO Director or delegate for transmittal to the NEPA Coordinator in compliance with this Order and other related authority.

SECTION 3. NOAA POLICIES.

.01 In meeting the requirements of NEPA, it is NOAA's policy to:

- a. fully integrate NEPA into the agency planning and decisionmaking process;
- b. fully consider the impacts of NOAA's proposed actions on the quality of the human environment;

c. involve interested and affected agencies, governments, organizations and individuals early in the agency planning and decisionmaking process when significant impacts are or may be expected to the quality of the human environment from implementation of proposed major Federal actions; and

d. conduct and document environmental reviews and related decisions appropriately and efficiently.

.02 NOAA's policy has been, and continues to be, that the scope of its analysis will be to consider the impacts of actions on the marine environment both within and beyond the U.S. Exclusive Economic Zone (EEZ).

SECTION 4. DEFINITIONS.

.01 Much of the terminology listed in this Section and elsewhere in this Order is derived from the authorities and references listed in Section 2 of this Order, particularly the CEQ's NEPA regulations. To ensure full compliance, the CEQ regulations should be consulted for comprehensive explanations of the terms. References to relevant CEQ terminology, as codified in 40 CFR 1500 et seq., are provided after each definition, where appropriate.

a. Amendment. A change to a management plan or regulation required by various statutes such as the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act, or MSFCMA) and the National Marine Sanctuaries Act (NMSA). A management plan amendment could be prepared to achieve a specific goal for a fishery or a marine sanctuary. Amendments may include regulations necessary to carry out management objectives. A regulatory amendment could clarify the intent of a Regional Fishery Management Council (RFMC) established by the Magnuson-Stevens Act or interpret broad terms or measures contained in existing fishery management plans (FMPs). Amendments must go through standard rulemaking procedures under the Administrative Procedure Act (APA) and must include the appropriate environmental analysis under NEPA.

b. Applicant. Any party who may apply to NOAA for a Federal permit, funding, or other approval of a proposal or action and whose application should be accompanied by an environmental analysis. Depending on the program, the applicant could be an individual, a private organization, or a Federal, state, tribal, territorial, or foreign governmental body. RFMCs are not considered applicants because of their unique status under Federal law.

c. Categorical Exclusion (CE). Decisions granted to certain categories



of actions that individually or cumulatively do not have the potential to pose significant impacts on the quality of the human environment and are therefore exempted from both further environmental review and requirements to prepare environmental review documents (40 CFR 1508.4). The main text of this Order presents specific actions and general categories of actions found to warrant a CE. CEs may not be appropriate when the proposed action is either precedent-setting or controversial, although such a determination must be made on a case-by-case basis (see Sections 5.06 and 6.01 of this Order). d. Council on Environmental Quality (CEQ). Organization within the Executive Office of the President charged with monitoring progress toward achieving the national environmental goals as set forth in NEPA. The CEQ promulgates regulations governing the NEPA process for all Federal agencies.

e. Cumulative Impacts. Cumulative impacts are those combined effects on quality of the human environment that result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what Federal or non-Federal agency or person undertakes such other actions (40 CFR 1508.7, 1508.25(a), and 1508.25(c)). Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

f. Emergency Action. Circumstances that require an action with significant environmental consequences be taken without observing CEQ regulations. In these cases, the Federal agency taking the action should consult with CEQ regarding alternative arrangements for substitute environmental review procedures.

g. Environmental Assessment (EA). A concise public document that analyzes the environmental impacts of a proposed Federal action and provides sufficient evidence to determine the level of significance of the impacts. The EA shall include a brief analysis of the environmental impacts of the proposed action and its alternatives. An EA will result in one of two determinations: 1) an EIS is required; or 2) a Finding of No Significant Impact (FONSI) (40 CFR 1508.9).

h. Environmental Impact Statement (EIS). A detailed written statement required by NEPA Section 102(2)(C) prepared by an agency if a proposed action significantly impacts the quality of the human environment. The EIS is used by decisionmakers to take environmental consequences into account. It describes a proposed action, the need for the action, alternatives considered, the affected environment, the environmental impacts of the proposed action, and other reasonable alternatives to the proposed action. An EIS is prepared in two stages: a draft and a final. Either stage of an EIS may be supplemented (40 CFR 1502.9(c) and Section 4.01y. of this Order).

i. Environmental Review. The analysis undertaken by the RPM to: 1) identify the scope of issues related to the proposed action; 2) make decisions that are based on understanding the environmental consequences of the proposed action; and 3) determine the necessary steps for NEPA compliance. The environmental review process could result in the preparation of one or more of the NEPA documents discussed in Section 5. of this Order.

j. Exempted Actions. Certain Federal actions may be exempted from complying with NEPA if such actions are specifically exempted by legislation or have been found to be exempted by the judicial process. For example, listing and delisting actions under Section 4(a) of the Endangered Species Act (ESA) have been determined by the judicial system to be exempt from NEPA.

k. Finding of No Significant Impact (FONSI). A short NEPA document that presents the reasons why an action will not have a significant impact on the quality of the human environment and, therefore, will not require preparation of an EIS. A FONSI must be supported by the EA, and must include, summarize, attach or incorporate by reference the EA (40 CFR 1508.13).

l. Human Environment. The human environment is defined by CEQ (40 CFR 1508.14) as including the natural and physical environment and the relationship of people with that environment. This means that economic or social effects are not intended by themselves to require preparation of an EIS. However, when an EIS is prepared and economic or social and natural or physical environmental impacts are interrelated, the EIS must discuss all of these impacts on the quality of the human environment.

m. Major Federal Action. An activity, such as a plan, project or program, which may be fully or partially funded, regulated, conducted, or approved by a Federal agency. “Major” reinforces, but does not have a meaning independent of “significantly” as defined in Section 4.01.x. and 6.01. of this Order. Major actions require preparation of an EA or EIS unless covered by a CE (40 CFR 1508.18). CEQ’s definition of “scope” regarding the type of actions, the alternatives considered, and the impacts of the action should be used to assist determinations of the type of document (EA or EIS) needed for NEPA compliance (40 CFR 1508.25).

n. Management Plan. A Federal action promulgated under statutes such as the Magnuson-Stevens Act, NMSA, or other statutes, that describes a resource or resources, the need for management, alternative management strategies, changes to management measures, pos-



sible consequences of such alternatives, and select recommended management measures. Included are FMPs and marine sanctuary plans prepared or implemented by NOAA. Such plans may incorporate a NEPA document into a single consolidated package. Plans not mandated by statute, e.g., habitat conservation plans and restoration plans, do not have regulations associated with them. For purposes of NEPA, their impacts are analyzed in the same manner as statutory plans.

o. Mitigation. Mitigation measures are those actions proposed to: avoid environmental impacts altogether; minimize impacts by limiting the degree or magnitude of the action; rectify the impact by repairing, rehabilitating, or restoring the affected environment; reduce or eliminate the impact over time by preservation; and/or compensate for the impact.

p. NEPA Document. An EA, FONSI, draft EIS (DEIS), supplement to a DEIS, final EIS (FEIS), supplement to a FEIS, or a Record of Decision (ROD). Consistent with NOAA's practice of issuing a memorandum to document the CE decision for many NOAA actions, the memorandum issued documenting the CE is considered a NEPA document.

q. Non-indigenous species. Any species or other viable biological material that enters an ecosystem beyond its historic range, including any such organism transferred from one country to another. Non-indigenous species include both exotics and transplants.

r. Notice of Intent (NOI). A short Federal Register announcement of agency plans to prepare an EIS. The notice may be published separately or combined with other announcements, e.g., with an Advanced Notice of Proposed Rulemaking or with an RFMC meeting notice (Exhibit 4 to this Order and 40 CFR 1508.22). The NOI shall: 1) describe the proposed action and possible alternatives; 2) describe the proposed scoping process, including whether, when and where any scoping meetings will be held; and 3) state the contact to whom questions should be addressed regarding the action and the EIS.

s. Project. A Federal action such as a grant, contract, loan, loan guarantee, vessel capacity reduction program, land acquisition, construction project, license, permit, modification, regulation, or research program that involves NOAA's review, approval, implementation, or other administrative action.

t. Record of Decision (ROD). A public document signed by the agency decisionmaker following the completion of an EIS. The ROD states the decisions, alternatives considered, the environmentally preferable alternative(s), factors considered in the agency's decisions,



mitigation measures that will be implemented, and whether all practicable means to avoid or minimize environmental harm have been adopted (40 CFR 1505.2).

u. Responsible Program Manager (RPM). The person with primary responsibility to determine the need for and ensure the preparation of any NEPA document (see Section 2.02c. of this Order).

v. Rulemaking. A prescribed procedure for implementing regulations or management measures authorized under Federal laws such as the Magnuson-Stevens Act, ESA, Marine Mammal Protection Act (MMPA), or Coastal Zone Management Act (CZMA). Rules may be promulgated independent of plans and permits. Examples include regulations for turtle excluder device, approaches to right whales and protection of sea lion rookeries. Rulemaking procedures must be in accordance with any specific guidelines established under the authorizing law and with the APA. Rulemaking actions are also subject to the provisions of other statutes, such as NEPA.

w. Scoping. An early and open process for determining the scope of issues to be addressed and identifying the significant issues related to a proposed action (40 CFR 1501.7).

x. Significant Impact. A measure of the intensity and the context of effects of a major Federal action on, or the importance of that action to, the human environment (40 CFR 1508.27). “Significant” is a function of the short-term, long-term, and cumulative impacts, both positive and negative, of the action on that environment. Significance is determined according to the general guidance in Section 6.01 of this Order. Specific criteria (Section 6.02 (a) - (i) of this Order) are established to expand the general conditions for determining the significance and the appropriate course of action. Determinations of non-significance will be made by the RPM but reviewed by the NEPA Coordinator prior to clearance. All additional criteria for “significant” must be approved by the NEPA Coordinator and published in the Federal Register as amendments to this Order (40 CFR 1508.27).

y. Supplemental Environmental Impact Statement (SEIS). A NEPA document prepared to amend an original EIS when significant change in the action is proposed beyond the scope of environmental review in the original EIS, or when significant new circumstances or information arise that could affect the proposed action and its environmental impacts (40 CFR 1502.9(c)). SEISs may also be necessary when significant changes to an action are proposed after a FEIS has been released to the public.

z. Tiering. Tiering refers to the coverage of general matters in broader



EISs (such as a national program or policy statement) with subsequent narrower statements or environmental reviews (such as regional or area-wide program environmental statements or ultimately site-specific statements) incorporating by reference the general discussions in the broad statement and concentrating solely on the issues specific to the statement subsequently prepared. Use of tiering is an alternative approach to NEPA analysis (Section 5.09c. of this Order).

.02 Refer to Exhibit 1 for a list of the acronyms used throughout this Order.

SECTION 5. IMPLEMENTING PROCEDURES.

.01 Applying the Environmental Review Process.

a. General. Environmental review is the process undertaken by the RPM to identify the scope of environmental issues related to the proposed action, to make decisions that are based on understanding the environmental consequences of the proposed action, and to determine the necessary steps for NEPA compliance (40 CFR 1500.2). Such an analysis must be undertaken for any major Federal action that is subject to NEPA. A similar analysis must be undertaken under E.O. 12114 for certain proposed major Federal actions not otherwise subject to NEPA with environmental effects outside U.S. jurisdiction. See Section 7.01 of this Order for guidance on NEPA compliance for international treaties, commissions, and compacts. The procedures for NEPA compliance with domestic laws, regulations, executive orders, and administrative orders may differ depending on whether the proposed action is a management plan or amendment, a research project, a construction project, regulation, or an emergency action. Section 6. of this Order addresses these differences in detail.

b. Process.

1. The environmental review process includes all of the actions required by CEQ in 40 CFR 1502 and 1503 for compliance with NEPA (Exhibit 2 to this Order). The process involves the following series of actions accomplished by or under the direction of the RPM:

(a) define the proposed action;

(b) consider the nature and intensity of the potential environmental consequences of the action in relation to the criteria and guidance provided in this Order to determine whether the action requires an EIS, EA, or CE;

(c) prepare a CE memorandum, as appropriate;

- (d) prepare an EA or initiate planning and for an EIS where an EIS is known to be appropriate;
- (e) prepare a FONSI (which ends the NEPA environmental review process for actions found not to have a significant impact on the quality of the human environment) or initiate planning for an EIS/SEIS based on the EA;
- (f) publish a NOI to prepare an EIS/SEIS and formally scope key issues in the EIS;
- (g) conduct the scoping process to determine relevant issues;
- (h) prepare a draft EIS/SEIS;
- (i) publish a Notice of Availability (NOA) and distribute the draft EIS/SEIS for 45-day public comment period;
- (j) hold a public hearing(s), if appropriate, on the draft EIS/SEIS;
- (k) incorporate public comments and responses to comments in a final EIS/SEIS;
- (l) publish a NOA and distribute the FEIS/SEIS for a 30-day “cooling off” period and public comment; and
- (m) release a ROD to the public.

2. To provide the maximum help in guiding the environmental review and decision process, the environmental review is to be coordinated by the RPM and initiated as early as possible in the planning process, regardless of whether the RPM anticipates the need for an EA or EIS. In the case of uncertainty regarding either preparation of the proper NEPA documents, or coordinating environmental analyses required by other statutes, early consultation with the NEPA Coordinator will assist the RPM in determining the best means for NEPA compliance. Consultation with the NEPA Coordinator during the early stages of document preparation should facilitate review and clearance at later stages of the decisionmaking process.

3. In those cases where programs or actions are planned by Federal or non-Federal agency applicants as defined in Section 4.01b. of this Order, the RPM will, upon request, supply potential applicants with guidance on the scope, timing, and content of any required environmental review prior to NOAA involvement (see Section 5.08 of this Order for more information). A listing of some programs and actions



commonly involving NEPA-related matters, and their corresponding NOAA contact for obtaining further NEPA guidance, is found in Exhibit 3 to this Order.

4. RPMs should consult with this Order when their involvement is reasonably foreseeable in an action or program proposed by a state or local agency or by an Indian tribe that could be a major Federal action.

5. RPMs should consult with the NEPA Coordinator and this Order before communicating with other Federal agencies regarding whether, and to what extent, NOAA will become involved in developing proposals for such agencies, or in the preparation of NEPA documents and associated environmental reviews initiated by such agencies.

6. When a proposed action involves several organizational units in NOAA, the RPMs of each unit should jointly determine which RPM should take the lead coordinating role in preparing environmental reviews and in assuming responsibility for preparation of any NEPA documents. The NEPA Coordinator will assist RPMs in developing a coordinated process for the action.

7. Where disagreements arise regarding NOAA's NEPA procedures for any action, the NEPA Coordinator will make the final decision. A complete statement of the NEPA Coordinator's authorities and functions is presented in Section 2.02a. of this Order.

c. Terminating the Process. The environmental review process may be stopped at any stage if action or program goals change, support for a proposed program or action diminishes, the original analysis becomes outdated, or other special circumstances occur. Should an EIS be terminated after publication of a DEIS, the EPA or CEQ, as appropriate, must be notified (see Section 5.04c.8. of this Order).

.02 Scoping and Public Involvement.

a. Purpose. The purpose of scoping is to identify the concerns of the affected public and Federal agencies, states, and Indian tribes, involve the public early in the decisionmaking process, facilitate an efficient EA/EIS preparation process, define the issues and alternatives that will be examined in detail, and save time by ensuring that draft documents adequately address relevant issues. The scoping process reduces paperwork and delay by ensuring that important issues are addressed early.

b. Public Involvement. Public involvement is essential to implementing NEPA. Public involvement helps the agency understand the concerns of the public regarding the proposed action and its environ-



mental impacts, identify controversies, and obtain the necessary information for conducting the environmental analysis. RPMs must make every effort to encourage the participation of affected Federal, state, and local agencies, affected Indian tribes, and other interested persons throughout the development of a proposed action and to ensure that public concerns are adequately considered in NOAA's environmental analyses of a proposed action and in its decisionmaking process regarding that action.

1. Public involvement may be solicited through: public hearings or public meetings, as appropriate; solicitation of comments on draft and final NEPA and other relevant documents; and regular contacts, as appropriate. The RPM should encourage the RFMCs to include the NEPA document with the RFMC's public hearing documents to solicit early public review and involvement. The RPM must provide public notice of NEPA-related hearings, public meetings, and the availability of NEPA documents so as to inform interested or affected parties (40 CFR 1506.6). Interested parties may obtain information and status reports on EAs, EISs, and other elements of the environmental analysis process from the RPM or the NEPA Coordinator. Public involvement is encouraged in the review of EAs, which may not otherwise get adequate public input. To the extent possible, EAs should be published or made available in conjunction with proposed rules and plans subject to public review and comment.

2. RPMs will be guided by 40 CFR 1506.6 in providing adequate public involvement in the environmental review process. In particular, RPMs should use state "single points of contact" designated under E.O. 12372. A current list of these contacts may be obtained from the NEPA Coordinator.

c. **Scoping Process.** Scoping is usually conducted shortly after a decision is made to prepare an EIS. However, scoping is also encouraged during the EA process when the need for an EIS is undetermined. As part of the requirements of the scoping process, the actions described in 40 CFR 1501.7(a), must be fulfilled when appropriate.

1. Formal scoping officially begins with publication in the Federal Register of a NOI to prepare an EIS (40 CFR 1501.7), but may in practice begin in the early stages of project development (Section 5.02d of this Order).

2. To the maximum extent practicable, comprehensive public involvement and interagency and Indian tribal consultation should be sought to ensure the early identification of significant environmental issues related to a proposed action. Early consultation is an important opportunity to identify planning efforts and environmental reviews done by



others (e.g., other agencies, applicants, RFMCs) that may provide important information for NOAA's environmental review process.

3. The scoping process should include, where relevant, consideration of the impact of the proposed action on:

(a) floodplains and sites included in the National Trails and Nationwide Inventory of Rivers, as required by Presidential Directive, August 2, 1979;

(b) sites nominated or designated by the Advisory Council on Historic Preservation, as required by 36 CFR 800;

(c) any national marine sanctuary or national estuarine research reserve;

(d) habitat as described in: 1) the National Marine Fisheries Service's 1983 habitat conservation policy; and 2) the National Habitat Plan, "A Plan to Strengthen the National Marine Fisheries Service National Habitat Program", August 30, 1996;

(e) affected state Coastal Zone Management Plans;

(f) the environmental and health impact on low-income and minority populations as required by E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations;

(g) the American Indian Religious Freedom Act;

(h) ESA Section 7 (16 U.S.C. 1531 et seq.);

(i) Section 305(b) of the MSFCMA (16 U.S.C. 1855 et seq.) regarding adverse effects on essential fish habitat; and other appropriate laws and policies; and

(j) nonindigenous species, including any direct impacts on living resources.

4. Scoping may be satisfied by many mechanisms, including: planning meetings and public hearings; requests for public comment on public hearing documents; discussion papers, and other versions of decision and background environmental documents. Scoping meetings should inform interested parties of the proposed action and alternatives and solicit their comments. If the proposed action has already been subject to a lengthy development process that has included early and meaningful opportunity for public participation in the development of



the proposed action, those prior activities can be substituted for the scoping meeting component in NOAA's environmental review procedures.

d. Notice of Intent. The NOI to prepare an EIS or to hold a scoping meeting should be published in the Federal Register as soon as practicable after the need for an EIS has been determined.

1. The notice must include (40 CFR 1508.22):

(a) the proposed action and possible alternatives;

(b) a summary of NOAA's proposed scoping process, including logistics for any meetings to be held; and

(c) the name and address of the RPM for further information about the proposed action and the EIS.

2. Written and verbal comments must be accepted during the identified comment period after publication of the NOI and must be considered in the environmental analysis process. This period should be at least thirty (30) days to provide an adequate opportunity for the public to comment.

3. When there is likely to be a lengthy period between the decision to prepare an EIS and actual preparation of the DEIS, publication of the NOI may be delayed until a reasonable time in advance of preparation of that DEIS.

4. If an RPM decides not to pursue a proposed action after an NOI has been published, a second NOI must be published to inform the public of the change.

5. The NOI may be combined with similar notices required for preparation of other documents (e.g., RFMC meeting notices; Exhibit 4 of this Order). This will minimize redundancy while still notifying the public of proposed actions.

6. Multi-agency NOIs must be coordinated among the involved agencies. Each agency must clear the NOI prior to publication.

.03 General Requirements for Environmental Assessments.

a. Purpose. The purpose of an EA is to determine whether significant environmental impacts could result from a proposed action. An EA is appropriate where environmental impacts from the proposed action are expected, but it is uncertain that those impacts will be significant. An



EA is also appropriate as an initial step of the environmental review, where the impacts of the proposed action may or may not be significant. The EA (defined at Section 4.01g. of this Order) is the most common type of NEPA document. For guidance in determining the environmental significance of a proposed action, consult Sections 4.01w., and 6.01 of this Order. If the action is determined to be not significant, the EA and resulting FONSI will be the final NEPA documents required. If the EA concludes that significant environmental impacts may be reasonably expected to occur, then an EIS must be prepared.

b. Contents. Because the environmental review in the EA provides the basis for determining whether or not the proposed action is expected to have a significant impact on the quality of the human environment, the EA must address the appropriate factors as outlined in Section 6.01 of this Order. Additionally, an EA must analyze the proposed action with respect to the laws and policies regarding scoping issues listed under the discussion of scoping under Section 5.02c.3. of this Order. An EA must consider all reasonable alternatives, including the preferred action and the no action alternative. Even the most straightforward actions may have alternatives, often considered and rejected in early stages of project development that should be discussed. In addition, the EA and FONSI must clearly state whether they rely on, or tier off, a previous NEPA document. As discussed in 40 CFR 1508.9, an EA must contain:

1. sufficient evidence and analysis for determining whether to prepare an EIS or a FONSI, and to facilitate preparation of any needed EIS;
2. a brief discussion of the need for the action;
3. alternatives as required by Section 102(2)(E) of NEPA;
4. a brief discussion of the environmental impacts of the proposed action and alternatives; 5. a listing of agencies and persons consulted;
6. a FONSI, if appropriate.

c. FONSI Determination. An EA that results in a FONSI completes NEPA analysis for that action. When an EA results in a determination that there may be potential significant impacts to the quality of the human environment, a FONSI determination, by definition, is an impossibility and shall not be proposed. Rather, the RPM may proceed directly with preparation of an EIS without submitting the EA for the NEPA Coordinator's approval. Early review of draft environmental review documents by the NEPA Coordinator may help avoid problems and expedite subsequent review of the EA with a FONSI determination or initiation of an EIS.

d. Mitigation. Mitigation measures used in determining a FONSI for an EA may be relied upon only if they are imposed by statute or regulation or submitted by an applicant or the agency as part of the original proposed action. As a general rule, agencies should not rely on the possibility of mitigation as a means of avoiding preparation of an EIS.

e. NOAA Review and Clearance.

1. The RPM must submit, through their AA/SO/PO Director to the NEPA Coordinator, one copy of the EA, FONSI and original letter To All Interested Government Agencies and Public Groups (Section 5.07 and Exhibit 6 of this Order) for review, clearance and signature prior to public availability. The FONSI, which must be attached to or incorporated into the final EA, notifies governmental agencies and the public that the environmental impacts of the proposed action have been determined by the RPM to be non-significant on the quality of the human environment under NEPA, and thus an EIS will not be prepared. The RPM should solicit input from other NOAA offices with expertise or jurisdiction prior to submitting the EA for final NEPA Coordinator clearance. Although some EAs are not generally distributed to the public, a cover letter must be prepared in case a copy is requested.

2. In cases where the RPM has adequate time and where the EA would benefit from greater public participation, a thirty (30) calendar day public review and comment period is encouraged prior to a FONSI determination. If such review and comment is utilized, the RPM may issue the EA in draft for public comment, and later finalize it with the action. The RPM may consult with the NEPA Coordinator to arrange alternative procedures for providing public involvement, including various combinations of notices and mailings (40 CFR 1506.6).

3. EAs should be submitted to the NEPA Coordinator at least three (3) working days prior to the requested clearance date; less time may be sufficient when the NEPA Coordinator has reviewed previous versions of the EA. After NOAA's clearance by the NEPA Coordinator, the RPM may publish a NOA in the Federal Register for those EAs with national implications or with broad interest to the public. In certain circumstances the NEPA Coordinator, in consultation with the RPM, may require that the proposed action not be taken until thirty (30) calendar days after the NOA has been published. This may include circumstances where consulting agencies or the public have expressed significant reservations, based on environmental concerns. EAs need not be transmitted to EPA for filing.



.04 General Requirements for Environmental Impact Statements and Supplemental Environmental Impact Statements.

a. Purpose.

1. The primary purpose of an EIS is to serve as an action-forcing device to ensure that the policies and goals defined in NEPA are infused into the ongoing programs and actions of the Federal government. An EIS must provide a full and fair discussion of significant environmental impacts and inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. As required by NEPA Section 102(2)(C), EISs are to be included in every recommendation or report on proposals for legislation and for other major Federal actions whose impacts may have a significant impact to the quality of the human environment. Federal actions that the RPM determines are significant require an EIS (defined at Section 4.01h. of this Order) or an SEIS (defined at Section 4.01y. of this Order) if there is a significant change from an earlier EIS. Some projects may be required by law to have an EIS completed for them, regardless of the magnitude of impact. Consult Section 6.01 of this Order for specific descriptions of types of actions considered significant to warrant an EIS.

2. Early public review and involvement in the environmental review process is encouraged (Section 5.02b. of this Order). CEQ (40 CFR 1502.25) requires that DEISs be prepared concurrent and integrated with studies and surveys required by other Federal statutes. To meet this requirement, the RPM should recommend that all NOAA programs and RFMCs integrate the NEPA document with the public hearing documents to better ensure adequate environmental review and opportunity for public review of the proposed action as it is developed.

b. Contents. Should the RPM make a determination that significant impacts to the quality of the human environment could result from a proposed action, a draft EIS/SEIS must be prepared. For general guidance on EIS procedures, refer to 40 CFR 1502.

1. As discussed in 40 CFR 1502.10-1502.18, the EIS/SEIS shall contain:

(a) a cover sheet and table of contents;

(b) a discussion of the purpose and need for the action;

(c) a summary of the EIS, including the issues to be resolved, and in the FEIS, the major conclusions and areas of controversy including those raised by the public;

- (d) alternatives, as required by Sections 102(2)(C)(iii) and 102(2)(E) of NEPA;
- (e) a description of the affected environment;
- (f) a succinct description of the environmental impacts of the proposed action and alternatives, including cumulative impacts;
- (g) a listing of agencies and persons consulted, and to whom copies of the EIS are sent;
- (h) an ROD, in the case of a FEIS; and
- (i) an index and appendices, as appropriate.

2. The EIS/SEIS cover sheet must clearly state whether it is a separate EIS or an EIS consolidated with a management plan or amendment, and whether the document supplements an earlier EIS.

3. It is NOAA and CEQ (40 CFR 1502.14(e)) policy to require identification of the preferred alternative(s) in the draft EIS/SEIS, whenever such preferences exist, and in the FEIS unless another law prohibits the expression of such a preference. When preferred alternatives do not exist, the document must provide a range of alternatives or other indication of the alternatives most likely to be selected, thus informing the public of the likely final action and its environmental consequences. The public is thus able to more effectively focus its comments.

c. **Public Review and Clearance.** Environmental review and procedures should run concurrently with other public review and comment periods (e.g., the FMP development and review process). The DEIS should be cleared by the NEPA Coordinator, filed, and made available for public comment no later than publication of other required documents (e.g., the public hearing draft FMP/amendment). An SEIS must be prepared in certain cases under 40 CFR 1502.9. An SEIS must be prepared, filed, and distributed for public comment as if it were an initial EIS.

1. **Preliminary Review.** A preliminary version of either the draft or final EIS/SEIS should be submitted to the NEPA Coordinator for review and comment at least one week before submission of the final NEPA review package for clearance. Early review by the NEPA Coordinator helps to ensure a more efficient process by avoiding last minute delays. The RPM should solicit input from other NOAA offices with expertise or jurisdiction regarding the proposed action



prior to submitting the EIS for final NEPA Coordinator clearance.

2. NEPA Review Package. The NEPA review package consists of the draft or final EIS/SEIS, modified as necessary by the RPM in response to comments received from the NEPA Coordinator and other appropriate NOAA offices, and the appropriate transmittal memoranda. The deadline for the NEPA Coordinator's receipt of the NEPA review package for final clearance is five days prior to filing at EPA; less time may be sufficient in those cases where the NEPA Coordinator has reviewed earlier versions. One copy of the EIS/SEIS and two letters, one transmitting the document to all other reviewers and the other filing the document with EPA, must be prepared by the RPM for the signature of the NEPA Coordinator. The format and content of these letters are addressed in Section 5.07 of this Order (see Exhibits 6 and 7 to this Order.) After the NEPA Coordinator signs the letters, the originating RPM will take all further actions, including filing the document at EPA and distributing it to interested parties. In the case of an SEIS, the transmittal letters to EPA and the public must state the title and publication date of the initial EIS to which the SEIS relates.

3. Filing at Environmental Protection Agency (EPA). The deadline for filing at EPA is 3:00 p.m. each Friday for publication by EPA of an NOA in the Federal Register the following Friday. Five bound copies of draft and final EISs are required by EPA headquarters at the time of filing. An additional three bound copies shall be sent to each affected EPA region. If the document is a programmatic EIS (an EIS on an entire program, e.g., deep seabed mining program or the Next Generation Radar (NEXRAD) program) that could affect a large part of the nation, more copies are required. Specific guidance on the number of copies needed for filing is available from the NEPA Coordinator. An equivalent number of any source documents, appendices, or other supporting analyses must also be submitted to EPA headquarters at filing. All EIS copies submitted to EPA headquarters must be bound and be identical in form and content to the copies distributed or made available to the public and other interested parties.

4. Notice of Availability. Once NOAA files an EIS/SEIS with EPA, EPA will publish an NOA in the Federal Register. As noted above, all public review and "cooling off" periods begin the day of publication of the NOA. It is the Office of the Federal Register's policy that a review period will not end on a weekend or holiday unless a requirement of law and/or specifically requested.

5. Public Distribution. On the same date as the document is filed with EPA, copies of each DEIS and transmittal letter to interested parties must be sent to all Federal, State, and local government agencies, public groups, and individuals who may have an interest in the pro-

posed action. Copies of each final EIS/SEIS must be sent to parties who submitted substantial comments on the draft EIS/SEIS, interested parties specifically requesting a copy, and others as determined by the RPM. Source documents, appendices, and other supporting information should be made available to the public when the RPM determines that reviewers would benefit from the additional information. The EIS/SEIS and related documents must be made available for public inspection at locations deemed appropriate by the RPM, such as public libraries or state “single points of contact.”

6. Public Comment. The public comment period on draft EIS/SEISs should be at least forty-five (45) days, unless a specific exemption is granted by EPA, through the NEPA Coordinator, for a different time period. A final EIS/SEIS must include all substantive comments or summaries of comments received during the public comment period of the draft EIS/SEIS. Summaries of comments are allowed when the comments received are exceptionally voluminous or repetitive. Comments must be responded to in an appropriate manner in the FEIS, as required under 40 CFR 1503.4. A final agency decision on the proposed action may not be made or recorded less than thirty (30) days after the NOA for the FEIS is published in the Federal Register (the “cooling off” period), unless an exception is granted by EPA through the NEPA Coordinator. Public comment and “cooling off” periods for draft and final SEISs are the same as for the initial draft and the final EIS.

7. Record of Decision. The ROD may not be made or filed until after thirty (30) days from the published date of the NOA for the FEIS. The ROD must be a separate document from the FEIS, but may be integrated into other agency decision documents such as a notice of final regulations or a management plan. The ROD is a public record and must be made available through appropriate public notice as required by 40 CFR 1506.6(b); however, there is no specific requirement for publication of the ROD itself, either in the Federal Register or elsewhere.

8. Terminating the Process. The environmental review process may be stopped at any stage if action or project goals change, support for a proposed action diminishes, the original analysis becomes outdated, or other special circumstances occur. If a DEIS has already been filed with the EPA, the RPM must notify the NEPA Coordinator of any contemplated termination of the environmental review process prior to completion of the FEIS. If the environmental review process is terminated at this point, the FEIS will not be prepared. After the RPM’s decision to terminate the environmental review process and NEPA Coordinator notification, the termination must be announced in the Federal Register. Project terminations must be explained in



writing by the RPM, through the NEPA Coordinator, to EPA so that EPA may withdraw the DEIS and close its file on the action. In addition, for supplemental NEPA documents only, the NEPA Coordinator must notify CEQ if the process stops after issuance of a draft SEIS but before issuance of the final.

d. Special Circumstances.

1. Legislative EIS. A legislative EIS (LEIS) is a detailed statement required by law to be included in a recommendation or report on a legislative proposal to Congress, and is considered part of the formal transmittal of a legislative proposal to Congress (see 40 CFR 1506.8). It may, however, be transmitted up to 30 days after initial transmittal to allow time for completion of an accurate statement which can serve as the basis for public and congressional debate. It must be available in time for Congressional hearings and deliberations. Preparation of an LEIS must conform to the requirements of an EIS except as follows:

(a) there need not be a scoping process;

(b) the statement should be prepared in the same manner as a DEIS, but should be considered the “detailed statement” required by statute. When any of the conditions identified in 40 CFR 1506.8 exist, both the draft and final EIS on the legislative proposal must be prepared and circulated as provided by 40 CFR 1503.1 and 1506.10; and

(c) comments on the LEIS must be given to the lead agency, which will forward them along with the agency’s responses to the Congressional committees with jurisdiction.

2. Shortened public review period. In certain cases, usually characterized by pending emergencies, by negative socio-economic impacts, or by threats to human health and safety, the RPM may request the NEPA Coordinator’s assistance in shortening the public review and “cooling off” periods for EISs, SEISs or FEISs. Exemptions for EISs and FEISs may be granted only by EPA, and the CEQ is responsible for granting exemptions for SEISs. All requests must go through the NEPA Coordinator prior to referral to EPA or CEQ.

.05 General Requirements for Categorical Exclusions.

a. Purpose. Categorical exclusions are intended to exempt qualifying actions from environmental review procedures required by NEPA. A CE is appropriate where a proposed action falls into a category of actions that do not individually or cumulatively have a significant impact on the quality of the human environment as determined through an environmental review by the agency. Where a proposed action is

new, under extraordinary circumstances in which normally excluded actions may have a significant environmental impact, or the potential environmental impacts are controversial, an EA or EIS is required. RPMs must consider the cumulative effects of a number of similar actions before granting a CE.

b. **Determining Appropriateness for Use of Categorical Exclusions.** The proposed action should be evaluated to determine the appropriateness of the use of a CE. That analysis should determine if: 1) a prior NEPA analysis for the “same action demonstrated that the action will not have significant impacts on the quality of the human environment (considerations in determining whether the proposed action is the “same” as a prior action may include, among other things, the nature of the action, the geographic area of the action, the species affected, the season, the size of the area, etc.); or 2) the proposed action is likely to result in significant impacts as defined in 40 CFR 1508.27.

c. **Exceptions for Categorical Exclusions.** The preparation of an EA or EIS will be required for proposed actions that would otherwise be categorically excluded if they involve a geographic area with unique characteristics, are subject of public controversy based on potential environmental consequences, have uncertain environmental impacts or unique or unknown risks, establish a precedent or decision in principle about future proposals, may result in cumulatively significant impacts, or may have any adverse effects upon endangered or threatened species or their habitats.

d. **NOAA Review and Clearance.** The RPM should consult with the NEPA Coordinator while planning actions that may be appropriate for a CE and notify the NEPA Coordinator of actions that receive a CE. Documentation of the basis for a determination of the appropriateness for a CE must be sent to the NEPA Coordinator no later than three (3) months after the subject action has occurred. If the action is determined to be a CE, a brief statement so indicating should be included within an appropriate decision memorandum (see Exhibits 5a and 5b to this Order). The RPM and the NEPA Coordinator can require an EA or EIS for an action normally covered by a CE if the proposed action could result in any significant impacts as described in Sections 4.01x. and 6.01 of this Order. When appropriate, the RPM should consult with states while planning actions that may be appropriate for a CE and notify such states of actions that receive a CE, as described in Sections 5.09e. of this Order.

.06 Emergency Actions.

a. Emergency actions may include measures to:

1. implement management or regulatory plans or amendments;



2. implement rules to protect threatened or endangered species or marine mammals;
3. establish or implement certain restoration projects; and
4. take other actions of an immediate nature (e.g., fishery management actions without an FMP).

b. Emergency actions are subject to the same NEPA requirements as non-emergency actions. Emergency actions are subject to the environmental review procedures outlined in Section 5.06 of this Order, requirements for public involvement and scoping set forth in Section 5.02 of this Order, and requirements and guidance of Sections 5.03, 5.04, and 5.06 of this Order concerning the type of environmental review documents necessary to comply with NEPA. Despite the emergency nature of a proposed action, RPMs must maintain contact with state government agencies to ensure that all state concerns are addressed within the time constraints of the emergency action. If time constraints limit compliance with any aspect of the environmental review procedures, the RPM should contact the NEPA Coordinator to determine alternative approaches, as discussed in this Section.

c. The RPM should determine whether an EA or an EIS will be prepared for emergency actions. The emergency action may be appropriate for a CE if the RPM determines that the action is below the threshold criteria for “controversial,” “major,” and “significant” that apply to “non-emergency” actions (Sections 4.01n. and 4.01w. of this Order). In the event of uncertainty regarding the necessary NEPA document for an emergency action, the RPM should consult with the NEPA Coordinator as early as possible.

d. Because an EA or CE has no statutory time requirement for public notice or comment, emergency actions that are appropriate for a CE or require an EA leading to a FONSI should not be delayed by any time constraints or requirements established by NEPA or this Order. If the RPM determines that the emergency action requires preparation of an EIS, the RPM should determine whether the requirements associated with draft and final EIS preparation, filing, and public review would delay implementation of the emergency action and endanger achievement of the objectives of the action. If preparation of the EIS would not delay the emergency action sufficiently to prevent attaining its objectives, an EIS must be prepared according to the environmental review procedures before the emergency action takes effect. If the RPM determines that time or EIS preparation may limit attaining the objectives of the emergency action, the RPM should ask the NEPA Coordinator to consult CEQ regarding alternative arrangements for

NEPA compliance. Making alternative arrangements with CEQ is a seldom used practice and the RPM should make every effort to avoid undertaking this approach.

e. Alternative arrangements for NEPA compliance must satisfy the CEQ regulations on emergencies (40 CFR 1506.11). Possible arrangements include shortened public review periods, review periods concurrent with effective emergency regulations but completed prior to implementation of final regulations, or staff assistance from the NEPA Coordinator in preparing necessary documents. Alternative arrangements with CEQ is a seldom used approach by federal agencies and the NEPA Coordinator will only undertake this approach for actions necessary to control the immediate impacts to the quality of the human environment resulting from the emergency action. Other actions remain subject to standard NEPA requirements and review.

.07 Guidance on Transmittal Letters for EAs and EISs. EAs and EISs should adhere to the following guidance for preparation (examples of transmittal letters are attached as Exhibits 6-9):

- a. the RPM will prepare all letters on “Office of the Under Secretary” letterhead;
- b. letters will be dated after being signed by the NEPA Coordinator; and
- c. the RPM will fill in all appropriate blanks in the sample letter formats.

.08 Actions Proposed by Applicants. Any applicant to NOAA regarding a proposed action (e.g., permit, funding, license, or approval of a proposal or action) must consult with NOAA as early as possible to obtain guidance with respect to the level and scope of information needed by NOAA to comply with NEPA.

- a. The RPM should begin the environmental review process as soon as possible after receiving the application and shall evaluate and verify the accuracy of information received from an applicant.
- b. The RPM should complete any NEPA documents, or evaluation of any EA prepared by the applicant, before making a final decision on the application.

.09 Streamlining Approaches to NEPA Compliance.

- a. Programmatic Documents. CEQ encourages agencies to use program, policy, or plan EISs, (i.e., programmatic EISs) to eliminate



repetitive discussion of the same issues (40 CFR 1500.4(i)). A programmatic environmental review should analyze the broad scope of actions within a policy or programmatic context by defining the various programs and analyzing the policy alternatives under consideration and the general environmental consequences of each. Specific actions that are within the program or under the policy should be analyzed through project-specific environmental review documents. A project-specific EIS or EA need only summarize the issues discussed in the broader statement with respect to the specific action and incorporate discussion from that environmental review by reference. The principal discussion should concentrate on the issues specific to the subsequent action.

b. **Generic Documents.** When preparing statements on broad actions (including proposals by more than one agency), EISs can be used to group and analyze several actions that have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, or subject matter (40 CFR 1502.4(c)). Appropriate actions could include clear-cutting, gear impacts, dredging, or other broad activity. For some types of actions, it may be appropriate to examine cumulative impacts through the use of a generic EIS, rather than preparing a large number of project-specific EAs or EISs.

c. **Tiering.** Tiering (Section. 4.01z) refers to a stepped approach to environmental review under NEPA. Tiering involves the review of a broad-scale agency action (such as a national program or policy) in a general EIS with subsequent narrower environmental reviews (such as regional or area-wide program environmental reviews or ultimately site-specific environmental reviews) that incorporate by reference the general discussions in the broad environmental review and concentrate solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of environmental reviews is: (a) from a program, plan, or policy EIS to a program, plan, or policy statement or analysis of lesser scope or to a site-specific environmental review; (b) from an EIS on a specific action at an early stage to a supplement or a subsequent environmental review at a later stage. Tiering in such cases is appropriate and encouraged because it helps the lead agency focus on the issues that are ripe for decision and exclude from consideration issues already addressed or those that are premature for review.

d. **Incorporation by Reference.** CEQ guidance recommends incorporating other materials by reference when the effect will be to cut down on the size of an environmental review document without impeding agency and public review of the action. The incorporated material shall be cited in the EA or EIS and the document shall state how the referenced document or material can be obtained. The contents of the

referenced materials should be briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by interested parties within the time allowed for comment in the environmental review document. Material based on proprietary data that are not available for review and comment should not be incorporated by reference. Examples of information that may be incorporated by reference include: “affected environment” chapters from previous EISs when the affected environment for the proposed action has not undergone noticeable changes; and discussions of cumulative impacts of a proposed action, if such impacts were discussed in a previous environmental review addressing a similar action (40 CFR 1502.21).

e. Cooperative Document Preparation. RPMs must cooperate with other Federal, state and local agencies and Indian tribes to the maximum extent practical to reduce duplication in document preparation.

1. Any applicable Federal and state environmental policy laws must be followed in preparing joint documents. The degree to which Federal agencies must adhere to local ordinances and codes is set forth in Public Law 100-678 (40 U.S.C. 601-616). Cooperation will include, where possible, joint planning, environmental research, public hearings, and environmental review documents (40 CFR 1506.2(b)). RPMs should work with the appropriate state or local agencies as a joint lead agency in fulfilling the intent of NEPA.

2. The CEQ regulations (40 CFR 1501.1(b)) emphasize cooperative consultation among agencies before an EIS is prepared, rather than submitting adversarial comments on a completed document. Upon the request of the lead agency, any other Federal agency that has jurisdiction by law must be a cooperating agency. In addition, any other Federal agency that has special expertise with respect to any environmental issue that should be addressed in the statement may be a cooperating agency upon request of the lead agency (40 CFR 1501.5 and 1501.6). An agency may also request to the lead agency that it be designated as a cooperating agency. If NOAA determines that its resource limitations preclude any involvement as a cooperating agency, it must so inform the requesting lead agency in writing and submit a copy of the letter to CEQ.

f. Adoption of Other Federal Documents.

1. The ultimate responsibility for NEPA compliance always falls on the NOAA program proposing the Federal action, but NOAA may adopt an EA, DEIS, or FEIS or portion thereof prepared by another Federal agency if the language satisfies the standards of the CEQ regulations and this Order.



2. When adopting an entire EIS without change, the RPM should recirculate the document as a FEIS. However, if the actions covered by the document are changed in a potentially significant manner, the document should be circulated as a draft and final (40 CFR 1506.3).

3. NOAA programs cannot adopt final decisions presented in documents prepared by other agencies. RPMs must prepare a new FONSI if it adopts an EA, or a new ROD if it adopts an EIS.

g. Third Party Documents. Environmental review documents prepared by an outside contractor must meet all the criteria of one prepared internally by another Federal agency.

.10 Comments on Non-NOAA NEPA Documents.

a. Requirements and Policy. CEQ regulations (40 CFR 1503) require that a DEIS be submitted for review to any Federal agency that has jurisdiction by law or special expertise over the resources potentially affected. It is NOAA's policy to provide considered, timely and factual comments on other agency DEISs. This essential NEPA activity provides the means to exert a significant positive influence on other Federal agency plans and projects and to ensure consideration, protection and mitigation of impacts to NOAA's trust resources.

b. Coordination. The NEPA Coordinator coordinates DOC review and comments on other agency DEISs and forwards all comments to the originating agencies. When comments are requested, copies of the incoming DEIS and a letter noting the deadline for receipt of comments will be sent by the NEPA Coordinator to appropriate DOC elements. Guidance in the preparation of these comments is available in 40 CFR 1503.3 and from the NEPA Coordinator. In particular, the following considerations should be observed when preparing comments.

1. Comments should be restricted to areas within the reviewer's competence, and conclusions must be supportable by facts. Each comment should be treated as a specialized piece of scientific writing that must stand up under scrutiny by the reviewer's peers.

2. Comments of an editorial nature, opinions on the merit of the project, or phrasing that reveals the personal bias of the reviewer must be scrupulously avoided.

3. The reviewer should:

(a) call attention to inadequate or missing data that makes it difficult

or

impossible to evaluate the conclusions reached in the DEIS;

(b) specify studies or types of information which will supply answers to the technical questions that the reviewer has raised;

(c) recommend modifications to the proposed action and/or new alternatives that will enhance environmental quality and avoid or minimize adverse environmental impacts;

(d) discuss environmental interrelationships between the proposed action and NOAA's trust resources that should be included in the EIS;

(e) outline the nature of any particularly appropriate monitoring of the environmental effects during any phase of the proposed project; and

(f) suggest ways of assisting the sponsoring agency to establish and operate monitoring systems.

.11 Referrals to CEQ of Environmentally Unsatisfactory Actions. A CEQ referral is a formal, third party arbitration process initiated when two or more agencies come to a complete impasse regarding a major environmental issue. It is CEQ's policy that referrals reflect an agency's careful determination that a proposed action raises significant environmental issues of national importance. CEQ referrals are made only after all other concerted efforts at resolution have failed.

a. RPMs will notify the NEPA Coordinator of actions by other Federal agencies believed to be environmentally unsatisfactory (i.e., those that are appropriate for "referral," under 40 CFR 1504.3). The NEPA Coordinator will recommend referrals to the Under Secretary for Oceans and Atmosphere and Administrator, NOAA. The NEPA Coordinator will work closely with the RPMs to prepare the letters and support materials required in the referral process.

b. Determinations of the kinds of proposals that are appropriate for referral are based on whether:

1. the action is environmentally unacceptable;

2. the action raises significant and major environmental issues of importance; and

3. reasonable alternatives (including no action) to the proposed action exist.



SECTION 6. INTEGRATING NEPA INTO NOAA LINE OFFICE PROGRAMS.

.01 Determining the Significance of NOAA's Actions. As required by NEPA Section 102(2)(C) and by 40 CFR 1502.3, EISs must be prepared for every recommendation or report on proposals for legislation and other "major Federal actions" significantly affecting the quality of the human environment. A significant effect includes both beneficial and adverse effects. Federal actions, including management plans, management plan amendments, regulatory actions, or projects which will or may cause a significant impact on the quality of the human environment, require preparation of an EIS. Following is additional explanation per the definitions used in determining significance.

a. "Major Federal action" includes actions with effects that may be major and which are potentially subject to NOAA's control and responsibility. "Actions" include: new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by NOAA; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals. Refer to 40 CFR 1508.18 for additional guidance.

b. "Significant" requires consideration of both context and intensity. Context means that significance of an action must be analyzed with respect to society as a whole, the affected region and interests, and the locality. Both short- and long-term effects are relevant. Intensity refers to the severity of the impact. The following factors should be considered in evaluating intensity (40 CFR 1508.27):

1. impacts may be both beneficial and adverse — a significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial;
2. degree to which public health or safety is affected;
3. unique characteristics of the geographic area;
4. degree to which effects on the human environment are likely to be highly controversial;
5. degree to which effects are highly uncertain or involve unique or unknown risks;
6. degree to which the action establishes a precedent for future actions with significant effects or represents a decision in principle about a future consideration;

7. individually insignificant but cumulatively significant impacts;
8. degree to which the action adversely affects entities listed in or eligible for listing in the National Register of Historic Places, or may cause loss or destruction of significant scientific, cultural, or historic resources;
9. degree to which endangered or threatened species, or their critical habitat as defined under the Endangered Species Act of 1973, are adversely affected; and
10. whether a violation of Federal, state, or local law for environmental protection is threatened.
11. whether a Federal action may result in the introduction or spread of a nonindigenous species.

c. “Affecting” means will or may have an effect (40 CFR 1508.3). “Effects” include direct, indirect, or cumulative effects of an ecological, aesthetic, historic, cultural, economic, social, or health nature (40 CFR 1508.8).

d. “Legislation” refers to a bill or legislative proposal to Congress developed by or with the significant cooperation and support of NOAA, but does not include requests for appropriations (40 CFR 1508.17). The NEPA process for proposals for legislation significantly affecting the quality of the human environment shall be integrated with the legislative process of the Congress (40 CFR 1506.8).

e. “Human environment” includes the relationship of people with the natural and physical environment. Each EA, EIS, or SEIS must discuss interrelated economic, social, and natural or physical environmental effects (40 CFR 1508.14).

.02 Specific Guidance on Significance of Fishery Management Actions. The following specific guidance expands, but does not replace, the general language in Section 6.01 of this Order. When adverse impacts are possible, the following guidelines should aid the RPM in determining the appropriate course of action. If none of these situations may be reasonably expected to occur, the RPM should prepare an EA or determine, in accordance with Section 5.05 of this Order, the applicability of a CE. NEPA document preparers should also consult 50 CFR 600, Subpart D, for guidance on the national standards that serve as principles for approval of all FMPs and amendments. The guidelines follow.

- a. The proposed action may be reasonably expected to jeopardize the



sustainability of any target species that may be affected by the action.

b. The proposed action may be reasonably expected to jeopardize the sustainability of any non-target species.

c. The proposed action may be reasonably expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in FMPs.

d. The proposed action may be reasonably expected to have a substantial adverse impact on public health or safety.

e. The proposed action may be reasonably expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species.

f. The proposed action may be reasonably expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species.

g. The proposed action may be expected to have a substantial impact on biodiversity and ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc).

h. If significant social or economic impacts are interrelated with significant natural or physical environmental effects, then an EIS should discuss all of the effects on the human environment.

i. A final factor to be considered in any determination of significance is the degree to which the effects on the quality of the human environment are likely to be highly controversial. Although no action should be deemed to be significant based solely on its controversial nature, this aspect should be used in weighing the decision on the proper type of environmental review needed to ensure full compliance with NEPA. Socio-economic factors related to users of the resource should also be considered in determining controversy and significance.

.03 Integrating NEPA Into NOAA's Decisionmaking Process. NEPA documents prepared in accordance with this Order must accompany the decision documents in the NOAA decisionmaking process for any major Federal action. The alternatives and proposed action identified in all such documents must correspond. Any NEPA document prepared for a proposal will be part of the administrative record of any decision, rulemaking, or adjudicatory proceedings held on that proposal.



a. NEPA Documents for Management Plans and Management Plan Amendments. NEPA documents for management plans and management plan amendments require an EA or the RPM may decide to proceed directly with an SEIS/EIS. If the RPM has doubt concerning significance, an EA will be used to determine whether a FONSI, SEIS, or an EIS is appropriate. A management plan amendment may also come under a CE (Section 6.03a.3. of this Order). Generally, where an EIS has been completed on a previous management plan or plan amendment and that EIS or SEIS is more than five (5) years old, the RPM should review the EIS to determine if a new EIS or SEIS should be prepared. RPMs may also consider the use of tiering (40 CFR 1502.20) to reduce paperwork in subsequent environmental analyses. The NEPA Coordinator is available for consultation on these determinations. As a general rule, the NEPA documents should be prepared at the earliest practicable time in conjunction with plan documents so that the environmental review process will run concurrently, and will be integrated into the plan development process.

1. Separate NEPA Documents from Management Plans and Plan Amendments. With this approach, the NEPA document (EA or EIS) is prepared as a separate document and is not incorporated into the related management plan/amendment. Cross references between the NEPA document and the management plan/amendment are encouraged to minimize redundancies between texts. However, under this option the NEPA document must be a stand-alone document. The NEPA document must comply fully with the CEQ regulations, including requirements for contents and administrative procedures and provisions of this Order. The plan and the NEPA document may be printed under the same cover.

2. Consolidated NEPA Documents, Management Plans and Plan Amendments. NEPA documents may be combined with the contents of related management plans or amendments to yield a single “consolidated” document. These documents must still satisfy the CEQ regulations, but need not be prepared according to the CEQ recommended outline for NEPA documents. The consolidated document must contain a detailed table of contents identifying required sections of the NEPA document. The NEPA Coordinator must clear the NEPA aspects of each consolidated document since the document serves as a NEPA document as well as a management plan or amendment. Similarly, all consolidated documents which include an EIS must be filed at EPA and follow the normal administrative procedures for any EIS, including public review. Comments on a part of a consolidated document that also serves as part of the EIS must be responded to in the FEIS.



3. Categorical Exclusions for Management Plans and Plan Amendments.

(a) No management plan may receive a categorical exclusion, i.e., all plans must be accompanied by an EA or EIS. Management plan amendments not requiring an EIS must be accompanied by an EA unless they meet the criteria of a CE (Section 5.05b. of this Order). A CE determination must be made by the RPM on a case-by-case basis on whether the effects of an action that normally falls under one of these categories may have a significant effect on the human environment. In determining whether the effects are significant, certain factors relevant to the proposed activity should be considered. These factors include the degree to which the effects on the quality of the human environment are: controversial; unique or involve unknown risks; precedential or represent a decision in principle about future consideration; individually insignificant but cumulatively significant; and/or likely to adversely impact species listed under the ESA or their habitats.

(b) Management plan amendments may receive a CE. Examples of CEs for management plan amendments include, but are not limited to, the following:

(1) a management plan amendment may be categorically excluded from further NEPA analysis if the action is an amendment or change to a previously analyzed and approved action and the proposed change has no effect individually or cumulatively on the human environment (these determinations must be accompanied by an individual memo to the record with a copy submitted to the NEPA Coordinator, and a brief statement within a decision memorandum); and

(2) minor technical additions, corrections, or changes to a management plan.

4. Special Circumstances. Management plan amendments may address an action that has been fully analyzed by a previous EIS or EA. These actions cannot expand the original action and the alternatives and their impacts must not differ from the previously reviewed action. Under these circumstances, the action does not qualify for a categorical exclusion because the action may have an adverse effect, however duplication of the previous environmental review is not necessary. These actions require only a new FONSI statement based on the existing NEPA document(s).

b. NEPA Documents for Trustee Restoration Actions under CERCLA, OPA, and NMSA. NOAA has the responsibility for planning and implementing restoration under the Comprehensive Environmental

Response, Compensation, and Liability Act of 1980 (CERCLA), the Oil Pollution Act of 1990 (OPA), and the National Marine Sanctuary Act (NMSA). NOAA should integrate restoration planning with the NEPA planning process.

1. EAs and EISs for Restoration Actions. Restoration plans require an EA, to determine the significance of the effect on the human environment, unless the RPM decides to proceed directly with an EIS. Restoration Plans that are significant based upon general and specific criteria in Section 6.01 of this Order require an EIS.

2. Categorical Exclusions for Restoration Actions. The Damage Assessment and Restoration Program policy states that restoration actions pursuant to CERCLA, OPA, and NMSA constitute major Federal actions that may pose significant impacts on the quality of the human environment, and are not per se entitled to a CE. Restoration actions that do not individually or cumulatively have significant impacts on the human environment (e.g., actions with limited degree, geographic extent, and duration) may be eligible for categorical exclusion (40 CFR 1508.4), provided such actions meet all of the following criteria:

(a) are intended to restore an ecosystem, habitat, biotic community, or population of living resources to a determinable pre-impact condition;

(b) use for transplant only organisms currently or formerly present at the site or in its immediate vicinity;

(c) do not require substantial dredging, excavation, or placement of fill; and

(d) do not involve a significant added risk of human or environmental exposure to toxic or hazardous substances.

3. Examples of Restoration Actions Eligible for a CE. Restoration actions likely to meet all of the above criteria and therefore be eligible for CE include the following.

(a) On-site, in-kind restoration actions (actions in response to a specific injury) such as:

(1) revegetation of habitats or topographical features, e.g., planting or restoration of seagrass meadows, mangrove swamps, salt marshes, coastal dunes, streambanks, or other wetland, coastal, or riparian areas;

(2) restoration of submerged, riparian, intertidal, or wetland substrates;



(3) replacement or restoration of shellfish beds through transplant or restocking;

(4) structural or biological repair or restoration of coral reefs; and

(b) Actions to restore historic habitat hydrology, where increased risk of flood or adverse fishery impacts are not significant. Examples of such actions include:

(1) restoration, rehabilitation, or repair of fish passageways or spawning areas; and

(2) restoration of tidal or non-tidal wetland inundation e.g., through enlargement, replacement or repair of existing culverts, or through modification of existing tide gates).

(c) Actions to enhance the natural recovery processes of living resources or systems affected by anthropogenic impacts. Such actions include:

(1) use of exclusion methods (e.g., fencing) to protect stream corridors, riparian areas or other sensitive habitats; and

(2) actions to stabilize dunes, marsh-edges, or other mobile shoreline features (e.g., fencing dunes, use of oyster reefs or geotextiles to stabilize marsh-edges).

4. Consolidated Restoration Plans and Environmental Documents. EA or EIS contents may be combined with the contents of related Restoration Plans to yield a single consolidated document. These documents must still satisfy the CEQ regulations and all requirements for contents and administrative procedures, but need not be prepared according to the CEQ recommended outline for EAs and EISs. The consolidated document must contain a detailed table of contents identifying required sections of the EA or EIS. The NEPA Coordinator must clear the NEPA aspects of each consolidated document since the document serves as an EA or EIS as well as a Restoration Plan. Similarly, all consolidated documents must follow the normal administrative procedures for any EA or EIS, including public review.

5. Tiering Regional Restoration Plans. NOAA may identify existing NEPA documents for regional restoration plans or other existing restoration projects that may be applicable in the event of an incident. Regional restoration planning may consist of compiling databases that identify existing, planned, or proposed restoration projects that may provide a range of appropriate restoration alternatives for consider-

ation in the context of specific incidents. If a regional restoration plan, existing restoration project, or some component of the plan or project is proposed for use, NOAA may be able to link or tier the necessary NEPA analysis to an existing analysis.

c. NEPA Documents for Projects and Other NOAA Actions. NOAA is involved in certain actions generally categorized as projects, including: funding and budget decisions; grants; loan guarantee programs; vessel capacity reduction programs; research programs; land acquisition; construction activities; real estate actions; and permits and licenses. The actual type of document to be prepared is based on the significance of the action, as described at Section 6.01 of this Order. Requirements for environmental analysis for these and similar activities are described below.

1. Projects and Other Actions That Require an EA but Not Necessarily an EIS.

(a) Projects that may have significant impacts are required to have an EA unless they meet the criteria of a CE or the RPM determines that an EIS will be prepared. Where an EA reveals that significant impacts will or may occur, the RPM must prepare an EIS.

(b) The RPM may prepare either an EA or EIS for the following types of actions, based on the scope and significance of the specific proposed action:

(1) financial assistance awards for land acquisition, construction, or vessel capacity reduction such as those administered under the Magnuson-Stevens Act, where such actions may result in significant impacts;

(2) new financial support services at the time of conception that have not already been analyzed;

(3) acquisition, sale, transfer, construction, or modification of major new facilities budgeted by NOAA, including lease-to-buy projects containing at least 20,000 square feet of occupiable space;

(4) major re-locations of NOAA personnel undertaken for programmatic reasons; and

(5) other actions, including research, that may as individual actions or cumulative actions have significant environmental impacts.

2. Projects and Other Actions That Require an EIS. An EIS is required for major Federal projects or actions determined by the RPM to



be significant. The RPM may proceed directly to an EIS without preparing an EA. These projects or actions include the following:

(a) major new projects or programmatic actions that may significantly affect the quality of the human environment;

(b) actions required by law to be subject to an EIS, such as an application for any license for ownership, construction, and operation of an Ocean Thermal Energy Conversion facility or for a Deep Seabed Mining license or permit;

(c) research projects, activities, and programs when any of the following may result:

(1) research is to be conducted in the natural environment on a scale at which substantial air masses are manipulated (e.g., extensive cloud-seeding experiments), substantial amounts of mineral resources are disturbed (e.g., experiments to improve ocean sand mining technology), substantial volumes of water are moved (e.g., artificial upwelling studies), or substantial amounts of wildlife habitats are disturbed (e.g., habitat restoration techniques);

(2) either the conduct or the reasonably foreseeable consequences of a research activity would have a significant impact on the quality of the human environment;

(3) research that is intended to form a major basis for development of future projects (e.g., acoustic thermometry experiments) which would be considered major actions significantly affecting the environment under this Order; and/or

(4) research that involves the use of highly toxic agents, pathogens, or non-native species in open systems; and

(d) Federal plans, studies, or reports prepared by NOAA that could determine the nature of future major actions to be undertaken by NOAA or other Federal agencies that would significantly affect the quality of the human environment.

3. Categorical Exclusions. The following categories of projects or other actions do not normally have the potential for a significant impact on the quality of the human environment and therefore usually are excluded from the preparation of either an EA or an EIS. In all cases, a determination must be made by the RPM on a case-by-case basis whether the effects of an action that normally falls under one of these categories may have a significant impact on the human environment. In determining whether the impacts are significant, certain

factors relevant to the proposed activity should be considered as described in Section 5.05b. of this Order.

(a) Research Programs. Programs or projects of limited size and magnitude or with only short-term effects on the environment and for which any cumulative effects are negligible. Examples include natural resource inventories and environmental monitoring programs conducted with a variety of gear (satellite and ground-based sensors, fish nets, etc.) in water, air, or land environs. Such projects may be conducted in a wide geographic area without need for an environmental document provided related environmental consequences are limited or short-term.

(b) Financial and Planning Grants. Financial support services, such as a Saltonstall-Kennedy grant, a fishery loan or grant disbursement under the Fishermen's Contingency Fund or Fisheries Obligation Guarantee Program, or a grant under the CZMA where the environmental effects are minor or negligible. New financial support services and programs should undergo an EA or EIS at the time of conception to determine if a CE could apply to subsequent actions.

(c) Minor Project Activities. Projects where the proposal is for a minor amelioration action such as planting dune grass or for minor project changes or minor improvements to an existing site (e.g., fences, roads, picnic facilities, etc.), unless such projects in conjunction with other related actions may result in a cumulative impact (40 CFR 1508.7).

(d) Administrative or Routine Program Functions. The following NOAA programmatic functions that hold no potential for significant environmental impacts qualify for a categorical exclusion: program planning and budgeting including strategic planning and operational planning; mapping, charting, and surveying services; ship support; ship and aircraft operations; fishery financial support services; grants for fishery data collection activities; basic and applied research and research grants, except as provided in Section 6.03b. of this Order; enforcement operations; basic environmental services and monitoring, such as weather observations, communications, analyses, and predictions; environmental satellite services; environmental data and information services; air quality observations and analysis; support of national and international atmospheric and Great Lakes research programs; executive direction; administrative services; and administrative support advisory bodies.

(e) Real Estate Actions. The following NOAA real estate actions with no potential for significant environmental impacts are categorically excluded from preparation of an EA or EIS: repair, or replacement in kind, of equipment and components of NOAA owned facilities; weath-



erization of NOAA facilities; environmental monitoring; procurement contracts for NEPA documents; architectural and engineering studies and supplies; routine facility maintenance and repair and grounds-keeping activities; acquisitions of space within an existing previously occupied structure, either by purchase or lease, where no change in the general type of use and minimal change from previous occupancy level is proposed; acquisition of less than 5,000 square feet of occupiable space by means of Federal construction, lease construction, or a new lease for a structure substantially completed prior to solicitation for offers and not previously occupied; lease extensions, renewals, or succeeding leases; relocation of employees into existing Federally-owned or commercially leased office space within the same metropolitan area not involving a substantial number of employees or a substantial increase in the number of motor vehicles at a facility; out-lease or license of government-controlled space, or sublease of government-leased space to a non-Federal tenant when the use will remain substantially the same; various easement acquisitions; acquisition of land which is not in a floodplain or other environmentally sensitive area and does not result in condemnation; and installment of antennas as part of site plan of the property.

(f) Construction Activities. Minor construction conducted in accordance with approved facility master plans and construction projects on the interiors of non-historic NOAA-owned and leased buildings, including safety and fire deficiencies, air quality, interior renovation, expansion or improvement of an existing facility where the gross square footage is not increased by more than 10 percent, and the site size is not increased substantially, and minor repair/replacement of existing piers or floats not exceeding 80 feet in length.

(g) Facility Improvement or Addition. Minor facility improvement or addition where ground disturbance is limited to previously disturbed areas (i.e., previously paved or cleared areas).

(h) NEXRAD Radar Coverage. Change in NEXRAD radar coverage patterns which do not lower the lowest scan elevation and do not result in direct scanning of previously non-scanned terrain by the NEXRAD main beam.

(i) Other Categories of Actions Not Having Significant Environmental Impacts. These actions include: routine operations and routine maintenance, preparation of regulations, Orders, manuals, or other guidance that implement, but do not substantially change these documents, or other guidance; policy directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature, or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be

subject later to the NEPA process, either collectively or case-by-case; activities which are educational, informational, advisory or consultative to other agencies, public and private entities, visitors, individuals or the general public; actions with short term effects, or actions of limited size or magnitude.

d. NEPA Documents for Actions taken under the Magnuson-Stevens Act. To the extent possible documents developed to support FMPs, FMP amendments, regulatory amendments, letters of acknowledgment of scientific research, authorization of educational activities, exempted fishing permits, and other fishery regulatory actions developed under the Magnuson-Stevens Act should be integrated with the required NEPA document to produce one combined document. The provisions of Section 6.02a. are applicable to FMPs and FMP amendments. The National Marine Fisheries Service (NMFS) and the RFMCs should attempt to develop and integrate the NEPA document with FMP public hearing documents at the earliest possible stage to provide the public and decision makers with an assessment of environmental impacts of the proposed actions prior to RFMC decisions. The NEPA analysis and the analysis required under the Magnuson-Stevens Act may be similar, but the scope of the NEPA analysis must include a discussion of the broader impacts of the fishery as a whole on the human environment. Specific guidance on determining significance for fisheries actions and the scope of environmental analyses required under NEPA is provided under Section 6.02 of this Order, and in the 1991 memorandum to the Regional Directors from the NMFS Assistant Administrator (Fox, 1991).

1. Fisheries Actions that Require an EA. EAs are the most common NEPA documents prepared for FMP amendments and regulatory actions. If NMFS or the RFMCs cannot make an initial determination that significant impacts are likely to occur from the proposed action or that the action is eligible for a CE, an EA should be prepared which includes sufficient information to determine whether the action is significant under NEPA and an EIS need be prepared, or a FONSI can be concluded. Examples of EAs on past FMP amendments may be obtained from the NEPA Coordinator.

2. Fisheries Actions that Require an EIS. When developing a new FMP for a previously unregulated species, the RFMC or NMFS should conduct an EIS on the proposed plan. An EIS must also be prepared for all FMP amendments and regulatory actions when the RFMC or NMFS determines that significant beneficial or adverse impacts are reasonably expected to occur. Consideration of cumulative impacts must also be taken into account when considering whether to prepare an EIS. In particular, the RPM must consider the cumulative impacts of connected management measures implemented under other FMPs, MMPA actions, or ESA management actions.



3. Framework Actions for Fisheries Management Plans. Framework actions must be given the same consideration under NEPA as are FMP amendments. The essence of the framework concept is the adjustment of management measures within the scope and criteria established by the FMP and implementing regulations to provide real time management of fisheries. Framework measures may be “open” measures that provide managers a given set or limit of options to apply to a fishery through a regulatory amendment process, or more traditional “closed” measures such as closures, seasons, or gear restrictions. Closed measures are implemented through in season rulerelated notices. Analysis for FMP amendments and regulatory amendments that establish or implement frameworks should, to the extent possible, assess the full range of impacts resulting from the options allowed under the framework. This will reduce the scope of analysis required for subsequent actions established under the framework. Closed management measures fully analyzed by a framework analysis require no further action.

4. Categorical Exclusions for Fisheries Management Actions. Fisheries management actions may qualify for a CE pursuant to Section 9.03a.3. of this Order if the actions individually and cumulatively does not have the potential to pose significant effects to the quality of the human environment. These determinations must be documented by a memorandum to the record which states the specific rationale behind why the action qualified for a categorical exclusion. In determining whether the effects of the fisheries management action are significant, the factors identified in Section 5.05b. of this Order for the appropriateness of a CE relevant to the activity should be considered along with the specific guidance on significance provided in Section 6.02 of this Order. If an action is determined to be CE under Section 5.05b. of this Order, a brief statement so indicating shall be included within an appropriate decision memorandum and submitted to the NEPA Coordinator. Actions that may receive a categorical exclusion may include:

(a) ongoing or recurring fisheries actions of a routine administrative nature when the action will not have any impacts not already assessed or the RPM finds they do not have the potential to pose significant effects to the quality of the human environment such as: reallocations of yield within the scope of a previously published FMP or fishery regulation, combining management units in related FMP, and extension or change of the period of effectiveness of an FMP or regulation; and

(b) minor technical additions, corrections, or changes to an FMP.

e. NEPA Documents For Actions taken under the Endangered Species

Act. NOAA has numerous responsibilities under the ESA that include listing species as threatened or endangered, designating critical habitat, preparing recovery plans, monitoring species that have been removed from the endangered species list, issuing scientific and enhancement permits, and issuing incidental take permits.

1. Special Circumstances For ESA Listing Determinations. Determinations that a species is threatened or endangered, determinations that a species should be delisted, and determinations that a species should be reclassified as threatened or endangered, are exempt from NEPA compliance. Pursuant to legislative history accompanying the 1982 amendments to the ESA, and *Pacific Legal Foundation v. Andrus*, these actions are exempt from NEPA and are not categorically excluded, which implies that NEPA is still applicable to these actions. Actions found to be exempt from NEPA are not the same as actions found to qualify as categorical exclusions, as those actions are subject to environmental impact considerations under NEPA.

2. ESA Actions That Require an EA but Not Necessarily an EIS.

(a) Promulgation of special management rules pursuant to Section 4(d) of the ESA requires an EA (see Section 6.03e.3.(a) for guidance on NEPA compliance for preparation of recovery plans). Section 4(d) rules may require an EIS, but that finding will be determined on a case-by-case basis or after an EA is completed on the action.

(b) Implementation of recovery actions, including actions identified in recovery plans require an EA unless covered by Section 6.03e.3.(a) of this Order. Some recovery actions, such as reintroductions or establishment of experimental populations, may require an EIS, but that finding will be determined on a case-by-case basis or after an EA is completed on the action.

(c) Issuance of permits for scientific purposes or to enhance the propagation or survival pursuant to Section 10(a)(1)(A) of the ESA for hatchery activities requires an EA (see Section 6.03e.3.(b) for guidance on NEPA compliance for other permits issued pursuant to this section of the ESA). Modifications to these permits may qualify for a CE, but that finding will be determined on a case-by-case basis or after an EA is completed on the action.

(d) Issuance of incidental take permits pursuant to Section 10(a)(1)(B) of the ESA must be accompanied by an EA unless covered by Section 6.03e.3(d) of this Order and may require an EIS. The cumulative impacts of the total number of permit actions must be considered in determining whether a FONSI is appropriate. NEPA documents prepared for these permits must pay particular attention to the direct,



indirect and cumulatively beneficial and adverse impacts to the environment (which includes listed species) from these permits.

(e) Establishment of experimental populations pursuant to Section 10(j) of the ESA requires an EA (see Section 6.03e.3.(a) of this Order for guidance on NEPA compliance for preparation of recovery plans). Establishment of some experimental populations may require an EIS, but that finding will be determined on a case-by-case basis or after an EA is completed on the action.

(f) Promulgation of enforcement and protective regulations pursuant to Section 11(f) of the ESA requires an EA (see Section 6.03e.3.(a) of this Order for guidance on NEPA compliance for preparation of recovery plans).

3. Categorical Exclusions for ESA Actions. The following actions may be appropriate for categorical exclusion:

(a) Preparation of Recovery Plans. Preparation of recovery plan pursuant to Section 4(f)(1) of the ESA is categorically excluded because such plans are only advisory documents that provide consultative and technical assistance in recovery planning. However, implementation of specific tasks themselves identified in recovery plans may require an EA or EIS depending on the significance of the action (see Section 6.03e.2.(b) for guidance on NEPA compliance for implementation of recovery actions).

(b) Scientific Research and Enhancement Permits. In general, permits for scientific purposes or to enhance the propagation or survival of listed species issued pursuant to sec. 10(a)(1)(a) of the ESA qualify for a CE (except for permits covered in Section 6.03e.2.(c)). The factors listed in Section 5.05b. of this Order must be considered in all CE determinations on permits. The RPM must also consider the cumulative impact on the listed species from the total amount of permits issued with CEs, and take into account any population shifts with the subject species.

(c) Critical Habitat Designations. The RPM will determine on a case-by-case basis whether NEPA analysis is required for the designation of critical habitat under Section 4(a)(3) of ESA. In general, the designation of critical habitat reinforces the substantive protections resulting from listing. To the extent that a designation overlaps with listing protections, it is unlikely to have a significant affect on the human environment and may qualify as a categorical exclusion under Section 8.05 of this Order. NMFS may decide as a matter of policy or otherwise to prepare an EA for certain critical habitat designations, such as those determined to be highly controversial, even when it is

determined that the designation meets the requirements of a categorical exclusion. In the case of critical habitat designations that include habitat outside the current occupied range of a listed species, the potential for economic and/or other impacts over and above those resulting from the listing exists; therefore, in general, a categorical exclusion will not apply.

(d) “Low Effect” Incidental Take Permits. The issuance of “low effect” incidental take permits under Section 10(a)(1)(B) of ESA permits actions that individually or cumulatively, have a minor or negligible effect on the species covered in the habitat conservation plan. A CE is generally appropriate for this type of action.

f. NEPA Documents for Actions Taken under the MMPA. NOAA is involved in a number of actions within their responsibility under the MMPA. These include permits for the taking of marine mammals under sec. 104 of MMPA for purposes of public display, scientific research, survival and recovery, and photography for educational or commercial purposes; permits or authorizations under sec. 101(a)(5)(E) and Section 118 for takings incidental to the course of commercial fishing operations; incidental harassment authorizations for small takes under MMPA sec. 101(a)(5)(A); grants for research; activities conducted under the General Authorization for Scientific Research; and take reduction plans.

1. MMPA Actions That Require an EA but Not Necessarily an EIS. Authorization for the intentional lethal take of individually identified pinnipeds under sec. 120 of the MMPA requires an EA. Take reduction plans and other activities to govern the interactions between marine mammals and commercial fishing operations generally require an EA. Permits and authorizations for incidental, but not intentional taking of ESA-listed marine mammals under Section 101(a)(5)(E) or sec. 118 of the MMPA require an EA.

2. Categorical Exclusions.

(a) In general, scientific research, enhancement, photography, and public display permits issued under section 101(a)(1) and 104 of the MMPA, and letters of confirmation for activities conducted under the General Authorization for Scientific Research established under Section 104 of the MMPA, qualify for a CE. The factors listed in Section 5.05b. of this Order must be considered in all CE determinations on permits. The RPM must also consider the cumulative impact on the protected species from the total amount of permits issued with CEs, and take into account any population shifts with the subject species. Research activities conducted under the General Authorization for Scientific Research will be reviewed periodically for cumulative impact.



(b) Small take incidental harassment authorizations under Section 101(a)(5)(a), tiered from a programmatic environmental review, are categorically excluded from further review. The small take incidental harassment authorizations are part of an expedited process to take small numbers of marine mammals by harassment without the need to issue specific regulations governing the taking of marine mammals for each and every activity. If an authorization under 101(a)(5)(a) does not tier from a programmatic environmental review, that action may require an EIS, EA, or CE, based on a case-by-case review.

(c) In cases such as those authorized by Section 109(h) of the MMPA (i.e., taking of marine mammals as part of official duties), such actions are not exempt from NEPA, nor are they categorically excluded from environmental review, and alternative measures are necessary. Under these conditions, a programmatic review may be the appropriate means for meeting NEPA requirements.

SECTION 7. INTEGRATING NEPA WITH OTHER ORDERS.

.01 Integration of E.O. 12114, Environmental Effects Abroad of Major Federal Actions, in the NOAA Decisionmaking Process.

a. Scope. This section applies to NOAA activities, or impacts thereof, which occur outside the United States, or which may affect resources not subject to the management authority of the United States, that are subject to E.O. 12114 and DAO 216-12 other than those activities addressed pursuant to NEPA. Specifically, E.O. 12114 directs agencies to establish environmental impact review procedures in the following categories of actions.

1. Major Federal actions significantly affecting the environment of the global commons outside the exclusive jurisdiction of any nation (e.g., the oceans, the atmosphere, the deep seabed, or Antarctica).

2. Major Federal actions significantly affecting the environment of a foreign nation not participating with the United States and not otherwise involved in the action.

3. All other major Federal actions significantly affecting the environment of a foreign nation, including, but not limited to, those that provide to that nation:

(a) a product and/or a principal product, emission, or effluent which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk;

(b) a physical project which is prohibited or strictly regulated by Federal law in the United States to protect the environment against radioactive substances.

4. Major Federal actions outside the United States, its territories and possessions which significantly affect natural or ecological resources of global importance designated for protection by the President under the provisions of E.O. 12114, or, in the case of resources protected by international agreement binding on the United States, by the Secretary of State. In this context, the phrase “outside the United States” refers to the area beyond the 200-mile exclusive economic zone and continental shelf of the United States.

b. Special Efforts. Certain activities having environmental impacts outside the United States require special efforts because of their international environmental significance. These include activities which:

1. threaten natural or ecological resources of global importance or which threaten the survival of any species;
2. may have a significant impact on any historic, cultural, or national heritage or resource of global importance; or
3. involve environmental obligations set forth in an international treaty, convention, or agreement to which the United States is a party.

c. Constraints.

1. Environmental documents on actions subject to this section should be as complete and detailed as possible under the circumstances. However, in analyzing activities or impacts which occur outside the United States, it may on occasion be necessary to limit the circulation, timing, review period, or detail of an EA or EIS for one or more of the following reasons:

- (a) diplomatic considerations;
- (b) National security considerations;
- (c) relative unavailability of information;
- (d) commercial confidentiality; and
- (e) the extent of NOAA’s role in the proposed activity.

2. When full compliance with this Order is not possible, consideration may be given to the preparation of:



(a) bilateral or multilateral environmental studies, relevant or related to the proposed actions, by the United States and one or more foreign nations, or by an international body or organization in which the United States is a member or participant; and

(b) concise reviews of the environmental issues involved, including EAs, summary environmental analyses, or other appropriate documents.

3. RPMs, in consultation with the NEPA Coordinator and the NOAA Office of General Counsel, will decide whether an EA or EIS should be prepared on an action under this section.

d. Consultation. In preparing an environmental document for an activity which may affect another country or which is undertaken in cooperation with another country and will have environmental effects abroad, the RPM should consult with the NEPA Coordinator both in the early stages of document preparation (in order to determine the scope and nature of the environmental issues involved) and in connection with the results and significance of such documents. The NEPA Coordinator and the NOAA Office of General Counsel will consult, as appropriate, with other offices in the DOC, CEQ, and Department of State when the proposed action or its environmental consequences are likely to involve substantial policy considerations. When consulting with foreign officials, every effort must be made to take into account foreign sensitivities and to understand that one of NOAA's objectives in preparing environmental documents in cases involving effects abroad is to provide environmental information to foreign decisionmakers, as well as to responsible NOAA officials. Finally, NOAA's efforts in preparing these environmental documents will be directed, in part, toward strengthening the ability of other countries to carry out their own analyses of the likely environmental effects of proposed actions.

.02 Integration of E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, in the NOAA Decisionmaking Process. E.O. 12898 requires agencies to analyze the effects of their actions on low-income and minority populations. The consideration of E.O. 12898 should be specifically included in the NEPA documentation for decisionmaking purposes. Unlike NEPA, the trigger for analysis under E.O. 12898 is not limited to actions that are major or significant and Federal agencies are mandated by E.O. 12898 to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. Thus, when applicable, environmental

justice should be addressed in activities that require NEPA analysis, and also in instances where the activity is not considered major or significant, and therefore does not require NEPA analysis beyond a CE determination.

a. Analyzing E.O. 12898 in EA and EIS Documents. When applicable, each NOAA EA and EIS shall include a discussion of the environmental effects of the proposed Federal action including human health, economic and social effects on minority and low-income communities. The analysis may be integrated into the environmental consequences and social/economic sections of the documents or a separate section specifically addressing E.O. 12898 may be included. If the information is integrated into an EA or EIS, the document should identify that the analysis meets the goals and intent of E.O. 12898.

b. Mitigation Measures in NEPA Documents for E.O. 12898. Whenever feasible, mitigation measures outlined or analyzed in an EA, EIS, or record of decision should address significant and adverse environmental effects on minority and low income communities. Beneficial impacts of the project may also be identified.

.03 Integration of E.O. 13112, Invasive Species, in the NOAA Decisionmaking Process. E.O. 13112 requires agencies to use authorities to prevent introduction of invasive species, respond to and control invasions in a cost effective and environmentally sound manner, and to provide for restoration of native species and habitat conditions in ecosystems that have been invaded. E.O. 13112 also provides that agencies shall not authorize, fund, or carry out actions that are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere unless a determination is made that the benefits of such actions clearly outweigh the potential harm; and that all feasible and prudent measures to minimize the risk of harm will be taken in conjunction with the actions. The consideration of E.O. 13112 should be included in the NEPA documentation for decisionmaking purposes when appropriate. Actions subject to such analysis include, but are not limited to, intentional introduction of organisms into ecosystems outside of their native range, activities which could result in the unintentional introduction of nonindigenous species, and activities that could promote the spread of nonindigenous species that have already been introduced.

.04 Integration of E.O. 13089, Coral Reef Protection, in NOAA Decisionmaking Process.

E.O. 13089 requires agencies to (a) identify actions that may affect U.S. coral reef ecosystems, (b) utilize their programs and authorities to protect and enhance the conditions of such ecosystems, and (c) ensure



that any actions they authorize, fund or carry out will not degrade the conditions of coral reef ecosystems. Agencies whose actions affect U.S. coral reef ecosystems shall provide for implementation of measures needed to research, monitor, manage, and restore affected ecosystems, including but not limited to, measures reducing impacts from pollution, sedimentation and fishing. To the extent not inconsistent with statutory responsibilities and procedures, these measures shall be developed in cooperation with the U.S. Coral Reef Task Force and fishery management councils and in consultation with affected States, territorial, commonwealth, tribal, and local government agencies and non-governmental stakeholders. The consideration of E.O. 13089 should be included in the NEPA documentation for decision making purposes when appropriate. Actions subject to such analysis include, but are not limited to, fishery management plans and/or other actions impacting fisheries or non-fisheries species of coral reef ecosystems, inland and/or coastal development, dredging and/or harbor development, actions impacting coastal water quality, and other activities which could result in the intentional or unintentional degradation of U.S. coral reef ecosystems.

SECTION 8. EFFECT ON OTHER ISSUANCES.

This Order supersedes NAO 216-6, dated August 6, 1991, and NOAA Administrator's Letter No. 17, dated April 3, 1978.

SIGNED,
Under Secretary for Oceans and Atmosphere Administrator

Attachments: Exhibits

Office of Primary Interest:
Office of Policy and Strategic Planning

